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On Beauty and Policing

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ON BEAUTY AND POLICING[†]

I. India Thusi

ABSTRACT—“To protect and serve” is the motto of police departments from Los Angeles to Cape Town. When police officers deviate from the twin goals of protection and service, for example by using excessive force or by maintaining hostile relations with the community, scholars recommend more training, more oversight, or more resources in policing. However, police appear to be motivated by a superseding goal in the area of sex work policing. In some places, the policing of sex workers is connected to police officers’ perceptions of beauty, producing a hierarchy of desirable bodies as enforced by those sworn to protect and serve us all.

This Article examines how police preserve racial and gender subordination in South Africa, an instructive analog for the United States because of both nations’ shared histories of racial apartheid and valorization of whiteness. Drawing from extensive original data from a multiyear study, this Article exposes how police officers’ perceptions about sex workers’ beauty influenced their policing of different classes of sex workers in Johannesburg, South Africa. Police valuations about sex workers’ beauty resulted in benevolent surveillance of sex workers who were higher on the social hierarchy and decreased police protection for sex workers whom they viewed as less beautiful in more dangerous areas of the community. If community protection and service were the primary motivators for police conduct, police officers should have focused on the spaces that were more dangerous, which were those with sex workers police deemed less professionalized and less beautiful.

This act of assigning value to different bodies, through the subjective language of aesthetics and beauty, reinforced existing racial and sexual hierarchies. Beauty was a proxy for race. Police assigned higher values to whiter and more European bodies, and discounted blacker bodies as foreign and less beautiful. So blacker bodies, which were less valuable than whiter bodies in their eyes, were simultaneously neglected yet susceptible to more brutal forms of policing during their limited interactions with police. Whiter feminine bodies were both well-protected and subject to the constant gaze of the police. These whiter bodies were ignored when they challenged white

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masculinity, but prioritized over blacker bodies. Reinforcing the higher value of whiter bodies over blacker bodies took precedence over reducing crime, suggesting that police serve and protect racial hierarchies in countries that have a history of white supremacy before they serve and protect the people.

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“Here was an ugly little girl asking for beauty A little black girl who wanted to rise up out of the pit of her blackness and see the world with blue eyes.”

“Adults, older girls, shops, magazines, newspapers, window signs—all the world had agreed that a blue-eyed, yellow-haired, pink-skinned doll was what every girl child treasured. ‘Here,’ they said, ‘this is beautiful, and if you are on this day “worthy” you may have it.’ I fingered the face, wondering at the single-stroke eyebrows; picked at the pearly teeth stuck like two piano keys between red bowline lips. Traced the turned-up nose, poked the glassy blue eyeballs, twisted the yellow hair. I could not love it. But I could examine it to see what it was that all the world said was lovable.”

Toni Morrison, *The Bluest Eye*[‡]

“As an institution intimately concerned with the viability of the state . . . policing remains closely tied to . . . the production of subjectivities”

Tracey Mears, *Policing and Procedural Justice*^{††}

INTRODUCTION

Many police departments around the world, from Los Angeles¹ to Cape Town,² have “protect and serve” in their mission statements and emblazoned across cars that patrol the streets of urban and rural communities alike. The South African Police changed its name to South African Police Service at the end of apartheid to emphasize that it would begin to serve the public.³ “Protect and serve” reflects police departments’ commitment to protecting

[‡] TONI MORRISON, *THE BLUEST EYE* 20, 137 (1970).

^{††} Tracey Meares, *Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525, 1533 (2017) (quoting IAN LOADER & AOGÁN MULCAHY, *POLICING AND THE CONDITION OF ENGLAND: MEMORY, POLITICS, AND CULTURE* 45 (2003)).

¹ *The Origin of the LAPD Motto*, L.A. POLICE DEP’T, http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 [<https://perma.cc/ENB7-29ZH>]; see also Matthew Holt, *Indemnifying Public Employees Against Judgments for Punitive Damages: The New Mexico Tort Claims Act Is Unconstitutional*, 47 N.M. L. REV. 318, 318 n.1 (2017) (“The motto is firmly embedded in New Mexico police culture to the point that, without reference to authority, the New Mexico Court of Appeals has noted that police officers have a duty to protect and serve, even when they are not on duty.” (citing *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep’t*, 317 P.3d 866, 875 (N.M. Ct. App. 2013))).

² *Cape Town Metro Police*, WESTERN CAPE GOV’T (last updated Nov. 20, 2019), <https://www.westerncape.gov.za/service/cape-town-metro-police> [<https://perma.cc/J4XS-J5W6>] (“With a mandate to protect and serve . . .”).

³ See Julia Hornberger, *From General to Commissioner to General—On the Popular State of Policing in South Africa*, 38 L. & SOC. INQUIRY 598, 600 (2013) (“[T]he transformation of the South African Police Force into the South Africa Police Service was not just a change of name. It was legally inscribed in the country’s constitution, and it officially proclaimed the founding of an entirely new policing organization.”).

the public from criminals and to serving the public interest as community guardians and servants.⁴ Some scholars who examine the role of police officers usually consider the ways the police do or do not meet the goals of protecting and serving, assuming that these goals are, or should be, the goals of the police.⁵ Much of the scholarship shares a common premise: public safety and the public interest are, or should be, the primary motivations for the police.

However, policing in a country founded on white supremacy may simply exist to protect racial hierarchy, even when such protection undermines the goals of community service and crime reduction.⁶ Policing is often a medium for expressing which bodies society values; indeed, expressing corporeal value may be the primary goal of policing.⁷ What if disciplining disfavored bodies into docility⁸ and labeling these bodies as less

⁴ Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEGAL F. 261, 272 (“‘Community caretaking’ denotes a wide range of everyday police activities undertaken to aid those in danger of physical harm, to preserve property, or ‘to create and maintain a feeling of security in the community.’ It includes things like the mediation of noise disputes, the response to complaints about stray and injured animals, and the provision of assistance to the ill or injured.” (citations omitted)); see also *Brigham City v. Stuart*, 547 U.S. 398 (2006) (holding that law enforcement officials may engage in the warrantless entry of a home in order to render assistance to an occupant who appeared to be injured); *Cady v. Dombrowski*, 413 U.S. 433 (1973) (establishing a community caretaking warrant exception).

⁵ See, e.g., Tom R. Tyler, *Can the Police Enhance Their Popular Legitimacy Through Their Conduct?: Using Empirical Research to Inform Law*, 2017 U. ILL. L. REV. 1971, 1972 (“When it exists, popular legitimacy—often referred to as trust and confidence—encourages deference to police/judicial authority, enhances compliance with the law in everyday life, and facilitates cooperation with efforts to maintain social order by being a witness or a juror.”); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 233 (2008) (“To be effective in lowering crime and creating secure communities, the police must be able to elicit cooperation from community residents. Security cannot be produced by either the police or community residents acting alone—it requires cooperation.”). But see ALEX S. VITALE, *THE END OF POLICING* 221–28 (2017) (arguing that some police scholars’ focus on legitimacy and cooperation is misguided and will do little to address the punitive nature of policing, particularly in poor communities of color).

⁶ See David S. Cohen, *Official Oppression: A Historical Analysis of Low-Level Police Abuse and a Modern Attempt at Reform*, 28 COLUM. HUM. RTS. L. REV. 165, 199 (1996) (“[T]he police are inherently called upon to preserve the *status quo*. When that *status quo* is fraught with class bias and racial oppression, the police will function to protect only upper- and middle-class white interests at the expense of all others.” (citation omitted)).

⁷ See *infra* Part III.

⁸ See MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* 215 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977) (“‘Discipline’ may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets; it is a ‘physics’ or an ‘anatomy’ of power, a technology. And it may be taken over either by ‘specialized’ institutions . . . or by institutions that use it as an essential instrument for a particular end . . . or by pre-existing authorities that find in it a means of reinforcing or reorganizing their internal mechanisms of power . . .”).

valuable for the purpose of exclusion⁹ supersedes the crime-fighting agenda? Drawing on primary data collected by the author, this Article indicates that the possibility is more fact than fiction in the policing of sex workers in Johannesburg, South Africa.¹⁰

Drawing from extensive ethnographic fieldwork, this Article illustrates how perceived beauty was a factor in whether and how police surveilled sex workers in the Hillbrow community in Johannesburg, South Africa.¹¹ The data suggest that increased policing of more beautiful sex workers in Hillbrow not only took precedence over the crime-fighting agenda, but that it also often worked against it.¹² Rather than serve and protect dangerous communities, the police gravitated toward the “benevolent surveillance” of sex worker communities with (what society perceived as) more beautiful sex workers.¹³ It was benevolent surveillance because these sex workers were under the watchful eyes of police officers who surveilled them in order to protect them, and the officers did so in a manner that reflected appreciation and kindness toward the sex workers. By adopting a language of aesthetics that was tied to race and gender, police officers reinforced an ideology, even if indirectly, about the superiority of whiteness and the corollary inferiority of blackness.¹⁴ Police officers’ behavior, attitudes, and commentary expressed that some sex workers were perceived as more beautiful than others.¹⁵ These perceptions are statistically significantly correlated with how and where they policed, which suggests beauty became a form of currency.¹⁶ In Hillbrow, the police exhibited more respect for brothels with sex workers they described as beautiful, portraying these sex workers as the “true professionals.”¹⁷ These observations about “beauty” expressed the officers’

⁹ See 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY* 145 (Robert Hurley trans., Vintage Books ed. 1990) (1978).

¹⁰ See A. Leon Higginbotham, Jr., *Racism in American and South African Courts: Similarities and Differences*, 65 N.Y.U. L. REV. 479, 487–88 (1990).

¹¹ See *infra* Part III.

¹² See *id.*

¹³ Field Notes Entry (Nov. 16, 2013) (on file with author); Field Notes Entry, Interview with Officers S and T, in Hillbrow, S. Afr. (Oct. 1, 2013) (on file with author); see *infra* Part IV.

¹⁴ Cf. Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895, 932 (2019) (challenging the contact hypothesis in disability law in light of the research on aesthetics and affect) (“[A]pppearances . . . mediate access to economic, social, and political rights and influence behavior. The aesthetic-affective process is ‘felt at the level of the body but is always socially and culturally conditioned.’ The aesthetic markers themselves—from eye or hair color to height and build—become visible measures of success, privilege, and, consequently, social control.” (footnotes omitted)).

¹⁵ See *infra* Part II.

¹⁶ *Id.*

¹⁷ *Id.* (quotation marks omitted).

views about female sexuality, race, gender, and femininity. Sex workers who were perceived to be whiter and more European were often placed higher on the hierarchy of protection priorities. As a result, beauty became a form of social capital that impacted how sex workers negotiated their relationships with the police. These findings indicate that police officers play an important role in how society determines whose bodies are important and assigns value to those bodies deemed worthy and valuable.¹⁸ These results are incongruous if police officers are primarily concerned with fighting crime and serving communities. However, if the assignment of value to different bodies in society is a natural consequence of policing, then these findings are less surprising.

These research findings are relevant to those interested in policing in the United States because both South Africa and the United States have attempted to build police organizations that respect the rights of everyone despite their racially fraught histories.¹⁹ They share complicated histories regarding race, gender, sexuality, and policing. While the United States had a period of legal racial segregation under Jim Crow for close to one hundred years following the end of slavery,²⁰ South Africa had a formalized apartheid program that required separation between the races for over seventy years following a period of colonialism.²¹ In both countries, the police were

¹⁸ See Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1497 (2016) (“Marginalized groups are more vulnerable to police contact and violence because members of these groups often have non-normative identities to which stereotypes of criminality and presumptions of disorder apply.”).

¹⁹ See Benjamin Bowling et al., U.N. Res. Inst. for Soc. Dev., *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work, Identities, Conflict and Cohesion Programme Paper No. 4*, at 4–5 (May 30, 2004), [http://www.unrisd.org/unrisd/website/document.nsf/240da49ca467a53f80256b4f005ef245/b26dcf2059e2f3e5c1256ec300495016/\\$FILE/bowling.pdf](http://www.unrisd.org/unrisd/website/document.nsf/240da49ca467a53f80256b4f005ef245/b26dcf2059e2f3e5c1256ec300495016/$FILE/bowling.pdf) [<https://perma.cc/KXY9-NH3J>] (discussing the prevalence of racially discriminatory and xenophobic policing in several nations, including the United States and South Africa); see also Charles J. Ogletree, Jr., *From Pretoria to Philadelphia: Judge Higginbotham’s Racial Justice Jurisprudence on South Africa and the United States*, 20 YALE L. & POL’Y REV. 383, 387 (2002) (drawing comparisons between racial discrimination in South Africa and the United States through the life experiences of Judge Leon A. Higginbotham).

²⁰ *Jim Crow Laws*, HISTORY.COM (last updated Jan. 29, 2020), <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> [<https://perma.cc/L9FR-UUKZ>]; see also Vincene Verdun, *The Only Lonely Remedy*, 59 OHIO ST. L.J. 793, 801 (1998) (noting that African Americans have endured “250 years of slavery, 100 years of Jim Crow, and a generation of less virulent discrimination”).

²¹ *A History of Apartheid in South Africa*, S. AFR. HIST. ONLINE (last updated July 23, 2019), <https://www.sahistory.org.za/article/history-apartheid-south-africa> [<https://perma.cc/C82P-FMHM>] (“[A]partheid was the ideology supported by the National Party (NP) government and was introduced in South Africa in 1948. Apartheid called for the separate development of the different racial groups in South Africa Apartheid made laws forced the different racial groups to live separately and develop separately, and grossly unequally too.” (citation omitted)).

enforcers of legally mandated separation of the races, and in both countries, the police have a history of antagonistic relations with black people.²² In both South Africa and the United States, whiteness has been idealized as the highest form of beauty and achievement, while blackness has been associated with depravity and sexual promiscuity.²³ As Professor Tanya Hernández has observed, “When societal benefits are distributed differentially within a racial caste system, race takes on the quality of property rights. Whiteness and approximations of whiteness will always be valued in a society structured on a White/non-White racial continuum.”²⁴ From dominant standards of beauty to popular culture representations, whiteness is associated with beauty and is at the top of the social hierarchy in both countries.²⁵ Both countries place whiteness as higher on the social continuum, such that lighter shades of black skin are more favorable than darker shades of black skin.²⁶ So, the social benefit does not just come from white skin as compared to black skin, but also from lighter skin shades as compared to darker skin shades.²⁷ Gender is a further complicating factor in this racial hierarchy, as the feminine ideal is associated with a vulnerability that is frequently assumed to be the sole domain of white women.²⁸ There are key differences between South Africa and the United States in that South Africa is a majority-black country and the United States is not; and apartheid

²² *Id.*

²³ See Tanya Katerí Hernández, “Multiracial” Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence, 57 MD. L. REV. 97, 115–16 (1998); see also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1713 n.9 (1993) (“American law had implicitly recognized a property interest in whiteness. The concept resonated in the South African context because of the similar and even more extreme patterns of white domination evident there.”).

²⁴ Hernández, *supra* note 23, at 115 (citation omitted).

²⁵ See, e.g., COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA (Kimberly Jade Norwood ed., 2014) (discussing preferential treatment attached to lighter skin tones); Mathias Fubah Alubafi et al., *The Shifting Image of Black Women’s Hair in Tshwane (Pretoria), South Africa*, 4 COGENT SOC. SCI. 1 (2018); Meagan Jacobs et al., *Fifty Shades of African Lightness: A Bio-Psychosocial Review of the Global Phenomenon of Skin Lightening Practices*, 7 J. PUB. HEALTH AFR. 67, 67–69 (2016) (discussing the social and political factors that make lighter skin more desirable in South Africa and arguing “men and women practice skin-lightening not only as a complex result of the internalization of global standards of beauty, but meshed with a national politics of race and colorism”); Toks Oyedemi, *Beauty as Violence: ‘Beautiful’ Hair and the Cultural Violence of Identity Erasure*, 22 SOC. IDENTITIES 537, 538 (2016) (arguing that Eurocentric standards of beauty that valorize straight hair have shaped black South African women’s perceptions about their natural hair texture).

²⁶ Sources cited *supra* note 25.

²⁷ See Jacobs et al., *supra* note 25, at 69.

²⁸ Reyna Ramolette Hayashi, *Empowering Domestic Workers Through Law and Organizing Initiatives*, 9 SEATTLE J. SOC. JUST. 487, 490 (2010) (“White women experienced sexism as a paternalistic denial of their right to work outside the sanctity of the home—a denial which sought to preserve the feminine ideal of women’s roles as mothers and wives.”)

in South Africa formally ended in 1994,²⁹ while Jim Crow in the United States was held unconstitutional in 1954.³⁰

Within this social context, this Article considers two questions. First, what is the relationship between police and sex workers in Johannesburg? Second, what are the limitations of popular understandings about the police in light of the policing of sex workers? This Article frustrates a commonly held assumption that crime prevention is a primary objective of police and their approach to policing. It does so by drawing on nearly two years of participant observation with police officers on the job and with operating brothels as well as conversations with sex workers; twenty-five semi-structured interviews conducted with police officers; and one focus group comprised of fifteen officers. The policing of sex work is an ideal site for examining how police enforce racial and gender hierarchies because sex work has long been a space for contesting female sexuality, autonomy, and desire.³¹

Part I of this Article explains why South Africa is an ideal place to examine the policing of racial and sexual subordination. This examination allows for consideration of how a legacy of racial separation and white domination lingers in contemporary policing. Michel Foucault's theories about discipline and punishment³² and Professor Kimberlé Crenshaw's theory on intersectionality³³ provide insights for understanding how race and gender complicate our assumptions about policing. Part II discusses the research methodology, which takes an anthropological approach and analyzes the cultural and social settings that contribute to the policing of racialized standards of beauty of sex workers. Part III outlines the empirical findings from the research in South Africa and demonstrates how perceptions about beauty influenced how police interacted with sex workers. These findings illustrate the ways that perceptions of whiteness lead to uneven

²⁹ See Penelope E. Andrews, *Perspectives on Brown: The South African Experience*, 49 N.Y. L. SCH. L. REV. 1155, 1172 (2005) (arguing that there is reason to be more optimistic about South Africa's potential for racial justice than the United States') ("South Africa's vehicle to racial equality, arguably more expansive, appears more strident and unequivocal. This may be because South Africa always had what may have been lacking in the United States in 1954: a majority of the population, historically disempowered and subordinated, clearly committed to the goal of racial equality.").

³⁰ Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2012) (outlawing discrimination on the basis of race, color, sex, or national origin); *Brown v. Board of Education*, 347 U.S. 483 (1954) (holding that racial segregation of schools is unconstitutional).

³¹ See generally I. India Thusi, *Policing Sex: The Colonial, Apartheid, and New Democracy Policing of Sex Work in South Africa*, 38 FORDHAM INT'L L.J. 205, 208 (2015) (providing a legal history of the policing of sex work).

³² FOUCAULT, DISCIPLINE AND PUNISH, *supra* note 8.

³³ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

social capital amongst sex workers. Specifically, the policing of beauty reflects a racial and gender hierarchy that depreciates blackness and valorizes whiteness. Part IV provides recommendations for reimagining the role of police in light of how they preserve existing racial and sexual hierarchies. It argues that we must acknowledge that assigning corporeal value is a function of policing, and we must incorporate intersectionality into how we analyze police work. In light of this, it becomes clear that policing can only be improved with less formal policing.

I. BACKGROUND

A. Policing in South Africa

The South African Police Service has an extensive history of violence and was the enforcement arm of the colonial and apartheid regimes. “From the start of European settlement in 1652, the country’s history has been marked by a brutal, violent, struggle over land, with forcible dispossession of the indigenous population . . . [and after apartheid a] well-developed state security apparatus . . .”³⁴ The colonial police forces retained a highly militarized approach because they were protecting “a social order and enforce[d] a system of law based, not on the will of the indigenous population, but on that of an alien power.”³⁵ The colonial forces engaged in torture, the coercion of witnesses, and the routine use of lethal force.³⁶

The paramilitary culture of the colonial police forces persisted even after the ad hoc colonial police forces amalgamated into the national South African Police (SAP) in 1913.³⁷ The police maintained a similar command structure and relied upon many of the same abusive practices.³⁸ The primary goal of the police was social control.³⁹ It was not a police force concerned with regulating ordinary crimes or police investigative work.⁴⁰ This approach

³⁴ See Robert Morrell et al., *Hegemonic Masculinity/Masculinities in South Africa: Culture, Power, and Gender Politics*, 15 MEN & MASCULINITIES 11, 14–15 (2012).

³⁵ E. van der Spuy, *Literature on the Police in South Africa: An Historical Perspective*, 1989 ACTA JURIDICA 262, 264.

³⁶ See Janine Rauch, *Police Reform and South Africa’s Transition*, CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION (2000) (paper presented at the South African Institute for International Affairs Conference on Crime and Policing in Transitional Societies), <http://www.csvr.org.za/docs/policing/policereformandsouth.pdf> [https://perma.cc/P3NH-LV9J].

³⁷ van der Spuy, *supra* note 35, at 267.

³⁸ See *id.*

³⁹ See *id.* at 271.

⁴⁰ See generally JOHN D. BREWER, BLACK AND BLUE: POLICING IN SOUTH AFRICA (1994) (providing a historical account of the connection between modern policing in South Africa and colonialism); Christopher A. Ford, *Watching the Watchdog: Security Oversight Law in the New South Africa*, 3 MICH.

resulted in a police force that was ill-equipped to handle tasks that are thought essential to basic police work, but well equipped to maintain control through paramilitary measures.⁴¹

With the rise of the National Party in 1948, the SAP became the main enforcement arm of the apartheid government.⁴² The SAP has been described as the “medium through which apartheid was experienced.”⁴³ The SAP was notoriously brutal and routinely relied on torture.⁴⁴ Many black South Africans were suspicious of the police,⁴⁵ and “[b]y the early 1990s, (all) the police in South Africa had acquired a reputation for brutality, corruption and ineptitude.”⁴⁶ The data prove these were more than just suspicions: the South African Truth and Reconciliation Commission (TRC) reported 33,713 instances of gross human rights violations from 1960–1994 and noted 5,002 instances of torture (most of which appear to be connected to “non-political” crimes) during this period, attributed largely to the SAP.⁴⁷

The apartheid police were also known for their excessive use of force during public demonstrations, and “[t]he brutality and violence with which the SAPS fulfilled its mandate—supplemented by the work of the homelands police forces—was notorious.”⁴⁸ Women were particularly exposed to gendered violence during apartheid.⁴⁹ Domestic violence was viewed as an incident of the private realm—more a matter for the family than for the police.⁵⁰ The apartheid police also subjected women to specialized forms of

J. RACE & L. 59, 108 (1997) (noting that the South African Police emphasized managing anti-apartheid unrest rather than ordinary police work).

⁴¹ See Bowling et al., *supra* note 19, at 4.

⁴² See Mark Malan, *Police Reform in South Africa: Peacebuilding Without Peacekeepers*, 8 AFR. SECURITY STUD. 32, 33 (1999).

⁴³ See Bowling et al., *supra* note 19, at 8.

⁴⁴ See Elmarie Whyte, Aluta Continua: *The Struggle Continues in South Africa—Against Violent Crime*, DIALOGUE E-JOURNAL, <http://dialoguejournal.org.au/wp-content/uploads/2016/09/Dialogue-Volume-7.1.pdf> [https://perma.cc/3URH-WTRH] (“Once in custody, confessions were often obtained through coercion, and torture was not uncommon.” (citation omitted)).

⁴⁵ Rauch, *supra* note 36, at 119.

⁴⁶ *Id.*

⁴⁷ INDEPENDENT COMPLAINTS DIRECTORATE, INVESTIGATING TORTURE: THE NEW LEGISLATIVE FRAMEWORK AND MANDATE OF THE INDEPENDENT COMPLAINTS DIRECTORATE 12 (2010) (citing 3 TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT 4, 7 (1998)).

⁴⁸ Whyte, *supra* note 44.

⁴⁹ See Adrien Katherine Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943, 958 (1997).

⁵⁰ See *id.* at 957 (“South Africa’s culture of the outside violence of apartheid has contributed to male and female acceptance of domestic violence in the private sphere as a fact of life. South African women have experienced a great deal of abuse as a result of both rape and domestic violence.”).

gender violence and torture.⁵¹ As just one of many examples, during a public TRC hearing, Zanele Zingxondo testified that she experienced sexual torture during a police interrogation.⁵²

While this Article is primarily focused on South Africa, my future articles will illustrate how the United States and South Africa provide a useful comparison for examining policing. South Africa's history of racially motivated policing that was intended to protect the separation of the races is similar to the policing of Jim Crow laws in the U.S.⁵³ During Jim Crow, the police quashed protests against legalized racial segregation, often participated in extrajudicial killings of black people during lynchings, and suppressed black voting.⁵⁴ Likewise, during apartheid, the police were notoriously aggressive during political protests against racial segregation and engaged in systematic efforts to suppress black political power.⁵⁵

B. Unmet Policing Standards

During the political negotiations of the early 1990s at the end of apartheid, there was a conscious effort to eliminate the violent legacy that

⁵¹ See Ayumi Kusafuka, *Truth Commissions and Gender: A South African Case Study*, 9 AFR. J. ON CONFLICT RESOLUTION 45, 55 (2009).

⁵² *Id.* at 57.

⁵³ See Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 276 (2007) ("The roots of coercive police interrogation techniques, known as the third degree, can also be traced to lynching. The first stage of lynching was often to extract a confession by whipping or burning the accused. Prior to *Miranda v. Arizona*, which famously upheld suspects' right to remain silent, police in the segregated South routinely used torture to force blacks to confess to crimes. Jerome Skolnick shows that public torture lynchings, typically carried out with the participation or sanction of the police, led directly to police whippings of black suspects to obtain a confession. The 1936 Supreme Court case *Brown v. Mississippi* involved the convictions of three black tenant farmers for murdering a white planter based solely on their confessions." (citations omitted)).

⁵⁴ See Jasmine B. Gonzales Rose, *Toward a Critical Race Theory of Evidence*, 101 MINN. L. REV. 2243, 2275 (2017) ("Not long ago, police enforced discriminatory slave codes and Jim Crow laws and turned a blind eye to mob violence and lynchings against blacks, all of which contribute to racial minorities' history of distrusting the police."); Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1363 (2017) ("It matters that the historical relationship between police and so many people in communities of color includes participation by law enforcement in lynchings and denial of civil rights to African Americans."); K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878, 1909 (2019) ("[W]hile white police forces, state militias, and judicial systems enforced Jim Crow laws, their failure to enforce other laws allowed racial terror to grow to such proportions that people referred to this aspect of the subordination regime as an independent, extrajudicial order—'lynch law.'").

⁵⁵ See Rauch, *supra* note 36, at 119.

was part of the fabric of the SAP.⁵⁶ There was a new policy mandate to shift the police organization from one rooted in authoritarianism to a democratic police organization that respected human rights.⁵⁷ It was a change from absolutist control to service-oriented policing.⁵⁸ By 1991, following the release of Nelson Mandela from prison, SAP absorbed ten other disparate police forces—each with its own legislation and distinct jurisdiction—into one large amalgamated police force with a new strategic plan.⁵⁹ The 1991 SAP Strategic Plan included six main foci: depoliticization; increased accountability; more visible policing; improved management practices; an overhaul of police training (including some racial integration); and restructuring of the police force.⁶⁰ The name of the police force was changed to the South African Police Service (SAPS) to demonstrate that the SAP would now serve the people.⁶¹ Various human rights norms were explicitly adopted to transform the police institution into one that would protect and respect human rights. As Piers Pigou, an expert in South African policing, notes, the SAP took concrete steps towards reform:

With the new political dispensation there has been a clear development of policy towards ensuring that policing in South Africa is conducted in a manner consistent with human rights and democratic values. This process has been multi-faceted in nature and has been underpinned by the adoption of a Bill of Rights, the establishment of a South African Police Service (SAPS) in 1995 and the implementation of a human rights training curriculum in basic police training.⁶²

There was great optimism about the changes to the police organization.⁶³ The police organization appeared to be evolving (at least on

⁵⁶ Mike Brogden, *Reforming Police Powers in South Africa*, 17 POLICE STUD. 25, 25 (1994) (“[R]ecent extraordinary events in South Africa, culminating in the election of President Mandela, have major implications for one of the most notorious police forces of modern times.”).

⁵⁷ *Id.* at 27.

⁵⁸ *Id.*

⁵⁹ See Rauch, *supra* note 36, at 119–20.

⁶⁰ *Id.* at 120.

⁶¹ *Id.* at 122.

⁶² Piers Pigou, *Monitoring Police Violence and Torture in South Africa*, CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION (Apr. 2002) (paper presented at the Mexican National Commission for Human Rights International Seminar on the Indicators and Diagnosis on Human Rights: The Case of Torture in Mexico), <https://www.csvr.org.za/docs/policing/monitoringpolice.pdf> [<https://perma.cc/B2BC-R8G2>].

⁶³ DAVID BRUCE, AFR. POLICING CIVILIAN OVERSIGHT F., POLICY BRIEF NO. 2, UNFINISHED BUSINESS: THE ARCHITECTURE OF POLICE ACCOUNTABILITY IN SOUTH AFRICA 1 (2011) (“[T]he first formal positions on policing issues that emerged from its 1992 policy conference, articulated in the ANC policy document *Ready to govern*, gave substantial emphasis to police accountability. Not only did this

a formal level) into a more diverse organization with leadership reflecting the racial and ethnic background of the population.⁶⁴

This trajectory, however, soon changed following the second elections in 1999. During the transitional years, South Africa faced a high crime rate, which was denounced by a public that was growing impatient with the police's response to crime.⁶⁵ The apartheid police force had been quite small and incompetent at policing ordinary crime, and this legacy of incompetence continued through the transition.⁶⁶ Expanding the relatively small police force into one that could manage South Africa's high crime rate following democracy proved challenging.⁶⁷ Moreover, the public demanded the police be more forceful in managing crime at the same time that the police were simultaneously reforming into an organization that aimed to use less force.⁶⁸

The public awareness of increased crime encouraged the adoption of practices that deviated from the models centered on human rights policing from the transition era.⁶⁹ It created the perception of increasing disorder. Professors Jean and John Comaroff recognized that "the specter of illegality appear[ed] to be captivating popular imaginations" shortly after democracy.⁷⁰ The South African population began demanding that more

say that the new police service would be 'accountable to society and the community it serves through its democratically elected institutions' but also that policing should be 'based on community support and participation' and that policing priorities would be 'determined in consultation with the communities they serve.'").

⁶⁴ See GARETH NEWHAM ET AL., CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION, DIVERSITY AND TRANSFORMATION IN THE SOUTH AFRICAN POLICE SERVICE: A STUDY OF POLICE PERSPECTIVES ON RACE, GENDER AND THE COMMUNITY IN THE JOHANNESBURG POLICING AREA 16–20 (2006), <https://www.csvr.org.za/docs/policing/diversity.pdf> [<https://perma.cc/3GE9-ALZ7>] (describing the diversification of the South African police force).

⁶⁵ Rauch, *supra* note 36, at 122 ("The new Minister for Safety and Security, Steve Tshwete, . . . emphasised the crime fighting role of the police, and ha[d] encouraged a more strong-arm approach to criminals, with far less emphasis on the internal problems of police reform. This discourse ha[d] found favour with the South African public, which is increasingly concerned about crime and a police service which felt disempowered by the period of police transformation following the first election.").

⁶⁶ See Rauch, *supra* note 36, at 124–25.

⁶⁷ See Antoinette Louw, *Surviving the Transition: Trends and Perceptions of Crime in South Africa*, 41 SOC. INDICATORS RES. 137 (1997) (describing the increasing crime rate and perceptions around crime from the 1980s through the political transition in South Africa).

⁶⁸ Julia Hornberger, *Human Rights and Policing: Exigency or Incongruence?*, 6 ANN. REV. L. & SOC. SCI. 259, 265 (2010) ("These states [including South Africa], confronted with increasing crime rates and high expectations about protecting their citizens' security, health, environment, etc., were now utterly dependent on police performance and the ability of their police to protect human rights. Police who had recently been objects of condemnation for their repressive practices were now to be a central means to the realization of democratic governance.").

⁶⁹ *Id.* at 264–65.

⁷⁰ Jean Comaroff & John Comaroff, *Criminal Obsessions, After Foucault: Postcoloniality, Policing, and the Metaphysics of Disorder*, 30 CRITICAL INQUIRY 800, 800 (2004).

heavy-handed policing tactics be adopted.⁷¹ Consequently, the police organization returned to the use of torture, corruption, and excessive force in response to these contemporary demands.⁷²

Despite these pressures, South Africa adopted several laws to ensure that policing would be informed by human rights ideals. Section 12 of the Constitution requires state institutions to respect individuals' right to freedom and security of person.⁷³ This right prohibits state actors from unlawfully detaining individuals or otherwise depriving them of liberty. This section requires police to ensure that citizens are not "deprived of freedom arbitrarily" or "tortured in any way," and are "free from all forms of violence."⁷⁴

Other sources of law further limit the use of force by police. First, the Criminal Procedure Act of 1977 dictates that police are to use only reasonably necessary force in effectuating arrests; instances of unreasonable force are considered police brutality.⁷⁵ In addition, the South African Police Service Act also regulates police action, stating that "[w]here a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances."⁷⁶ Finally,

⁷¹ Rauch, *supra* note 36, at 125 ("Feeling the effects of a devastating post-transition crime wave, the South African public began to demand tougher action against criminals Recent policy approaches to the problem of crime have largely abandoned any commitment to social crime prevention by the police, attempting to shift this responsibility instead to the 'social' cluster of government departments such as housing, health, welfare and education. The government's two-pronged crime reduction approach now revolves around sustained heavy policing operations (currently known as Operation Crackdown), and ongoing reform of the criminal justice system.").

⁷² The pervasiveness of past police practices illustrates what has been described as the "informal organizational police culture." Hornberger, *Human Rights and Policing*, *supra* note 68, at 261.

⁷³ S. Afr. CONST., 1996, ch. 2 § 12 ("12. Freedom and security of the person

(1) Everyone has the right to freedom and security of the person, which includes the right—

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right—

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body; and
- (c) not to be subjected to medical or scientific experiments without their informed consent.").

⁷⁴ *Id.*

⁷⁵ Criminal Procedure Act 51 of 1977 § 27 (S. Afr.).

⁷⁶ South African Police Service Act 68 of 1995 §13(3)(b) (S. Afr.) (updated through 2012).

the common law prohibits assault,⁷⁷ unlawful detention,⁷⁸ and rape.⁷⁹ Police officers who engage in these activities are acting outside of the scope of their duties and may be prosecuted as criminals.⁸⁰

These legal reforms were intended to reform South African institutions through the explicit incorporation of human rights norms.⁸¹ Many of these reforms were instituted with a specific eye towards police organizations, given their history of human rights abuses and apartheid enforcement.⁸² SAPS further adopted a human rights training manual to promote human rights policing: “Whereas apartheid obliged policemen and policewomen to disregard the human rights of fellow South Africans, they have now been offered a place of pride in the process of building a new and better life for all.”⁸³ SAPS has a policy against torture that states “[n]o member may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone.”⁸⁴ These legal norms were intended to reform the police and create an institution with a culture that embraces human rights.⁸⁵

However, legal reforms change laws, not people, and so may be ineffective at changing actual attitudes and culture, and therefore the manner in which policing actually occurs.⁸⁶ More importantly, police must both want

⁷⁷ *Poswa v. Minister of Safety and Security* 2011 (41) SA 1 (ZACPEHC) para. 36, at 14 (S. Afr.).

⁷⁸ *Louw and Griffin v. Minister of Safety and Security* 2010 (2) SACR 178 (ZAGPPHC) at 4 (S. Afr.).

⁷⁹ *K v. Minister of Safety and Security* 2005 (6) SA 419 (CC) at 13 para. 18 (S. Afr.).

⁸⁰ *See id.* (holding the South African Minister of Police vicariously liable for the petitioner’s rape that was conducted by police officials).

⁸¹ *See Hornberger, Human Rights and Policing*, *supra* note 68, at 265.

⁸² *But see* Monique Marks, *Dancing with the Devil?: Participatory Action Research with Police in South Africa*, 30 S. AFR. CRIME Q. 27, 27 (2009) (noting that there have been new reforms to remilitarize the police service and that “new proposals for ‘beefing up policing’ are not informed by evidence-based research”).

⁸³ *White Paper on Safety and Security: “In Service of Safety,”* S. AFR. GOV’T, DEP’T OF SAFETY & SECURITY (1998), <https://www.gov.za/documents/safety-and-security-white-paper> [<https://perma.cc/37KH-ZD8C>]; *see also* THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS, INITIAL COUNTRY REPORT: SOUTH AFRICA 134 (1998), <https://www.justice.gov.za/policy/african%20charter/afr-charter04.html> [<https://perma.cc/3JA4-Z8RH>].

⁸⁴ S. AFRICAN POLICE SERV., POLICY ON THE PREVENTION OF TORTURE AND TREATMENT OF PERSONS IN CUSTODY 7 (1999).

⁸⁵ *See* Rauch, *supra* note 36, at 123.

⁸⁶ *See* Kristina Scurry Baehr, Comment, *Mandatory Minimums Making Minimal Difference: Ten Years of Sentencing Sex Offenders in South Africa*, 20 YALE J.L. & FEMINISM 213, 244–46 (2008) (arguing that while the rape laws in South Africa have become more protective of rape victims, sexist attitudes and gender discrimination remain, even with law enforcement officials charged with enforcing those rape laws); Charles Manga Fombad, *The Constitution as a Source of Accountability: The Role of Constitutionalism*, 2 SPECULUM JURIS 41, 42 (2010) (“Today we are haunted by the old demons of

and be able to carry forth their tasks while adopting these new norms. Although the police may embrace human rights in form, police practice often is very different. These policies have in many ways enabled police officers to adopt a human rights informed terminology, even in the exercise of human rights violations.⁸⁷ There is a fundamental disconnect between what is said and what is done.⁸⁸ The disconnect between the goals of policing and the reality is similar to the inability to realize truly democratic policing in the United States.⁸⁹

Sex work remains criminalized in South Africa under the Sexual Offences Act.⁹⁰ This legislation criminalizes the act of both the sex worker and the client.⁹¹ However, sex workers are rarely prosecuted under the Act; instead they are prosecuted more frequently under various municipal ordinances and legislation, such as loitering and public disturbance regulations.⁹² Police use loitering regulations and other highly discretionary public disorder ordinances to detain sex workers.⁹³ This practice is consistent

authoritarian rule which we had hoped to have exorcised through constitutional reforms and multiparty democracy in the 1990s.”).

⁸⁷ Hornberger, *Human Rights and Policing*, *supra* note 68, at 271 (“In South Africa, this has taken the form of using human rights as a shield that works by deflecting criticism and hiding behind it a much more violent and *bricolage* kind of practice.”).

⁸⁸ *See id.*

⁸⁹ *See* Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1832 (2015) (“It is both unacceptable and unwise for policing to remain aloof from the democratic processes that apply to the rest of agency government.”); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 762 (2012) (arguing that part of the problem of policing is the scholarly focus on constitutional violations rather than the broad regulation of police action); David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1703 (2005) (noting that “judges have largely failed to consider the systemic requirements for democratic policing”).

⁹⁰ Sexual Offences Act 23 of 1957 § 12A(1) (S. Afr.) (“Any person who, with intent or while he reasonably ought to have foreseen the possibility that any person, who is 18 years or older, may have unlawful carnal intercourse, or commit an act of indecency, with any other person for reward, performs for reward any act which is calculated to enable such other person to communicate with any such person, who is 18 years or older, shall be guilty of an offence.”).

⁹¹ In Amendment Act 32 of 2007, the Act was amended to more explicitly indicate that it was referring to the activities of the contractor. *See* Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 § 11 (S. Afr.) (“11. A person (‘A’) who unlawfully and intentionally engages the services of a person 18 years or older (‘B’), for financial or other reward, favour or compensation to B or to a third person (‘C’)—(a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or (b) by committing a sexual act with B, is guilty of engaging the sexual services of a person 18 years or older.”).

⁹² *See* Chi Mgbako & Laura A. Smith, *Sex Work and Human Rights in Africa*, 33 FORDHAM INT’L L.J. 1178, 1217 (2010) (“[M]unicipal by-laws generally relating to public nuisances such as noise, littering, loitering, and public indecency are employed against sex workers and prostitution establishments.”).

⁹³ *Id.*

with how sex work has historically been policed in South Africa—as a public nuisance violation.⁹⁴ The Sexual Offences Act may nonetheless legitimize the regulation of sex workers by providing police officers with a moral bargaining chip for explaining why this population should be subject to special surveillance.⁹⁵

C. *Discipline, Police, and Intersectionality*

Michel Foucault's theory on disciplinary policing provides a theoretical framework for understanding the policing of sex work. Foucault extended Jeremy Bentham's description of the Panopticon, a watchtower through which prison officials could observe prisoners from a central location, in *Discipline and Punish*.⁹⁶ The actual presence of the prison officials in the watchtower was irrelevant; the true concern was the power of surveillance to coerce people into desired behaviors.⁹⁷ The ever-watchful eye of the centrally-placed watchtower (which prisoners never knew was manned or vacant) was enough to ensure obedience with prison regulations—it was normalizing.⁹⁸ Foucault describes the coercive nature of this constant surveillance as the disciplinary function of power.⁹⁹ Policing in this context includes all those activities intended to monitor communities and ensure that they are complying with social and legal norms.¹⁰⁰ This conception of policing suggests that the role of police is not merely to prevent crime and maintain order in the community; the police play an important role in

⁹⁴ I have spent close to two years conducting ethnographic fieldwork in Johannesburg exploring the nature of the relationship between police and sex workers in South Africa. Several of the conclusions from this Section concerning contemporary police practices are drawn from the ethnographic data gleaned from that research.

⁹⁵ See JOEL FEINBERG, *The Expressive Function of Punishment*, in *DOING AND DESERVING: ESSAYS IN THE THEORY OF RESPONSIBILITY* 95–118 (1970) (describing the expressive role that punishment plays in announcing what types of conduct a society is willing to denounce).

⁹⁶ See FOUCAULT, *DISCIPLINE AND PUNISH*, *supra* note 8, at 195–97. Foucault points to the Panopticon as a system of normalization, which is a “system of finely gradated and measurable intervals in which individuals can be distributed around a norm—a norm which both organizes and is the result of this controlled distribution Such a power has to qualify, measure, appraise, and hierarchize” Paul Rabinow, *Introduction* to MICHEL FOUCAULT, *THE FOUCAULT READER* 20, 20 (Paul Rabinow ed., 1984).

⁹⁷ FOUCAULT, *DISCIPLINE AND PUNISH*, *supra* note 8, at 200 (“[A]t the periphery, an annular building; at the centre, a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheric building is divided into cells, each of which extends the whole width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other, on the outside, allows the light to cross the cell from one end to the other.”).

⁹⁸ *Id.*

⁹⁹ See *id.* at 201.

¹⁰⁰ *Id.*

disciplining the community into moral compliance through constant surveillance.¹⁰¹ Disciplinary surveillance renders the bodies of the community docile and is focused on managing life and compliance with dominant social norms.¹⁰² It is focused on normalization and thus does not require external legitimacy from those being disciplined. After all, police do not create the dominant norms; they merely enforce preexisting dominant social norms and laws.

Under the disciplinary model of policing, the focus is on the police organization's role in reinforcing dominant social norms,¹⁰³ which may include enhancing its legitimacy. Even where the affected community views the police as illegitimate because of constant, antagonistic surveillance, the police may still be emboldened to continue their work as normalizing agents. In fact, Loïc Wacquant described the punitive apparatus as a "peculiar institution" that maintains a racial and class caste.¹⁰⁴ The police are ordinarily the first point of contact with the criminal system; they thus reinforce a society's social caste by funneling individuals into the incarceration system and determining who deserves heightened scrutiny at the onset. Surveillance can be both normalizing by expressing who matters in society through protection or a lack of protection, and punishing by subjecting people who are lower in the social hierarchy to aggressive encounters with the State. The heightened surveillance of these communities through aggressive police interactions can also be rationalized as a means to discipline these communities and communicate their place on the social hierarchy,¹⁰⁵ especially when this function takes precedence to crime prevention or community caretaking.

Racism and patriarchy intersect and manifest a distinct form of disciplinary surveillance of women of color, especially sex workers of color. Professor Kimberlé Crenshaw provides the conceptual framework of intersectionality, a way of examining how multiple forms of subordination

¹⁰¹ *See id.*

¹⁰² *Id.*

¹⁰³ *See* Rabinow, *THE FOUCAULT READER*, *supra* note 96, at 20–21.

¹⁰⁴ *See* Loïc Wacquant, *The New 'Peculiar Institution': On the Prison as Surrogate Ghetto*, 4 *THEORETICAL CRIMINOLOGY* 377, 385 (2000).

¹⁰⁵ *See* andré douglas pond cummings, *Reforming Policing*, 10 *DREXEL L. REV.* 573, 579 (2018) ("The essence of controlling black bodies was written into the nation's founding documents, including the Constitution, and has animated lawmakers' thinking and mythmaking since the early days of this nation. 'Black criminality is literally written into the American Constitution . . .'" (footnote omitted)); Roberts, *supra* note 53, at 278 ("[C]ontemporary police brutality is not an exception to the law. Current legal doctrine condones police brutality and makes individual acts of abuse appear isolated, aberrational, and acceptable rather than part of a systematic pattern of official violence.").

intersect to produce unique forms of oppression.¹⁰⁶ Her classic article *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* argues black women have been unable to seek legal relief under antidiscrimination laws in the United States for forms of discrimination unique to them.¹⁰⁷ This distinct harm from the intersection of racism and patriarchy is at the core of intersectionality.¹⁰⁸ It is not a theory merely about complex identity experiences, or another way of saying “it’s complicated.”¹⁰⁹ Intersectionality considers the existence of unique forms of structural subordination that are often completely ignored and unaddressed in the current legal doctrine.¹¹⁰

Applying intersectionality theory to the criminal justice system, critical race theorists argue that black women face distinct harms that cannot be tied solely to racism or gender discrimination, but to the unique ways that they intersect.¹¹¹ Professor Crenshaw discusses the paradox of a criminal justice system that leaves women of color underprotected and overpoliced.¹¹² In the context of the United States, she argues that black women are underprotected because they receive inadequate protection from law enforcement when they are the victims of crime.¹¹³ For example, black women have been arrested when seeking assistance with domestic disputes or in relation to intimate partner violence.¹¹⁴ Rather than being viewed as victims in these cases, they are viewed as suspects and subject to arrest and prosecution.¹¹⁵ Professor Alexandra Natapoff argues that while many scholars focus on the harshness and overenforcement of criminal laws, underenforcement is a serious

¹⁰⁶ See Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 33, at 140.

¹⁰⁷ *Id.* at 141–52.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 CALIF. L. REV. 1239, 1243 (2012) (“[R]ace and gender are at the heart of the practice of shackling female prisoners during labor and childbirth. The intersection of race and gender explains why female prisoners are at once masculinized, yet uniquely punished as women during pregnancy and childbirth. More specifically, the examination of the intersection of race and gender in the context of stereotypes about Black women demonstrates how the mechanisms of subordination, including criminalization and incarceration, have evolved since the era of chattel slavery to facilitate the marginalization of racialized women.” (footnote omitted)).

¹¹² Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418, 1444 (2012).

¹¹³ *Id.* at 1442, 1444.

¹¹⁴ *Id.* at 1453–55.

¹¹⁵ See Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2066 (2017).

problem in some communities.¹¹⁶ Black women have complained about police response time to their calls for assistance.¹¹⁷ Yet, they remain overpoliced because of racial profiling and the constant police presence in low-income communities of color.¹¹⁸ This creates what appears to be a paradox, wherein they experience both too little and too much policing.¹¹⁹

If the purpose of policing is to protect and serve the community, this paradox indicates a systemic failure that must be addressed. Some scholars recommend that we encourage police to improve their interactions with the community as they engage in crime prevention activities.¹²⁰ But in societies where racial caste systems were justified by the law, the racial hierarchies do not simply disappear.¹²¹ Under a Foucauldian model of disciplinary policing, there is no paradox in the simultaneous underpolicing and overpolicing of black communities.¹²² Members of disfavored communities have called upon the police for assistance as protectors and enforcers of the law for domestic disturbances, and police have treated them as threats that need to be punished.¹²³ An aggressive police force that disciplines black women into compliance with dominant social norms while simultaneously engaging in a benign neglect of this population because they are not as valued in the eyes

¹¹⁶ See Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1725 (2006) (recognizing the “long history of underenforcement of serious crimes in its poorest and most dangerous neighborhoods”).

¹¹⁷ See Kathryn Russell-Brown, *Black Protectionism as a Civil Rights Strategy*, 53 BUFF. L. REV. 1, 15–16 (2005) (“Benign neglect conspiracies are those that do not require intent to harm, rather the harm is caused by the government’s failure to protect members of the African-American community. Slow response times by the police who answer calls for service in Black neighborhoods, and the failure of the government to prevent the influx of drugs into urban areas, are examples of benign neglect conspiracies.” (citation omitted)); Jeremy Gomer & Kristen Mack, *ACLU Suit Alleges Police Slower to Respond in Minority Areas*, CHI. TRIB. (Oct. 28, 2011), <https://www.chicagotribune.com/news/ct-xpm-2011-10-28-ct-met-aclu-police-lawsuit-20111028-story.html> [<https://perma.cc/XNK3-RGQV>].

¹¹⁸ Kimberly D. Bailey, *Watching Me: The War on Crime, Privacy, and the State*, 47 U.C. DAVIS L. REV. 1539, 1568 (2014) (arguing that mass criminalization has been accompanied by the mass surveillance of poor communities of color).

¹¹⁹ This paradox is not limited to only black women. Black men similarly report experiencing too much police presence through negative encounters, like stop and frisk and police stops, but also too little assistance in response to their experiences as victims of crime. See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2100–04 (2017).

¹²⁰ See Tyler & Fagan, *supra* note 5, at 266–67.

¹²¹ But see *id.* (discussing strategies for encouraging cooperation between police and communities of color without regard for the racial caste or history of racial subordination in the United States).

¹²² See FOUCAULT, DISCIPLINE AND PUNISH, *supra* note 8, at 149–56.

¹²³ See Crenshaw, *From Private Violence to Mass Incarceration*, *supra* note 112, at 1444; see also MARK SHAW, CRIME AND POLICING IN POST-APARTHEID SOUTH AFRICA 59–60 (2002) (finding that South African women believe that the police do not provide adequate protection to address violence against women).

of the police is entirely expected.¹²⁴ The police are indirectly expressing the corporeal value of these women by engaging in this type of policing.¹²⁵ In both the United States and South Africa, the legacy of racial subordination lingers in policing, and women of color experience unique expression of a hierarchy that reflects this racial history and the stereotypes that plague them. The policing of sex workers in Johannesburg reveals how sexuality and gender complicate our understandings about the police.

D. Regulating Sex Work in South Africa

One evening, I interviewed Zolo, a young police officer who filed community complaints and certified documents. I began my interview with Zolo by asking about his thoughts on sex work and soon asked him how he thought sex work should be treated.

INDIA (researcher):	Should prostitution be illegal?
ZOLO ¹²⁶ (Hillbrow police officer):	It is legal . . . mostly. ¹²⁷

This comment about the “mostly” legal nature of sex work illustrates how sex work occupies a liminal space¹²⁸ where the State has intruded into the private lives of its citizens and made a private matter a public concern. Sex work is difficult to regulate and is at the literal and figurative margins of proper society, where legality and illegality often blur.¹²⁹ The policing of sex work straddles the line between formal and informal.¹³⁰ Sex work is a space where informal attitudes about beauty and subjective value are manifest in

¹²⁴ Cf. FOUCAULT, *THE HISTORY OF SEXUALITY*, *supra* note 9, at 144–45 (including the “juridical system of the law,” which includes actual policing, as well as other forms of surveillance).

¹²⁵ See Judith Butler, *Foucault and the Paradox of Bodily Inscriptions*, 86 J. PHIL. 601, 601–07 (1989).

¹²⁶ All names in this study, other than the author’s, which is India, have been anonymized.

¹²⁷ Interview with Police Officer B, in Hillbrow, S. Afr. (Nov. 23, 2013).

¹²⁸ Joanna Brewis & Stephen Linstead, *‘The Worst Thing Is the Screwing’ (1): Consumption and the Management of Identity in Sex Work*, 7 GENDER, WORK & ORG. 84, 89 (2000) (“[T]he fact that [sex workers] are selling something which has not been *fully* commodified and which is usually associated with the non-commercial private sphere, governed as it is by values of intimacy, love and affect. This liminality arguably means that the *place* where prostitution happens, whether actual geographical location, part of the body or symbolic location (in terms of its positioning in the prostitute’s psyche), is also crucial to the prostitute’s sense of self, to their self-esteem.”).

¹²⁹ *Id.*

¹³⁰ The police are charged with formally enforcing laws that criminalize prostitution. Yet, the relationship between police and sex workers is often informed by informal customs and social norms particular to the location where sex work is occurring. See Thusi, *supra* note 31, at 208 (providing a legal history of the policing of sex work).

formal tasks, including police activities.¹³¹ On the streets, police often appear to be acting in an informal, ad hoc manner. However, I observed that high-level organizational directives intended to regulate the police obligations and duties toward sex workers also influence police action and set some formal limits on the exercise of discretion. These obligations themselves reflect the tension between law and human rights: police must respect the human rights of sex workers, but they also must enforce the laws of the country.

Sex work is technically illegal, but it is also time-consuming to regulate.¹³² Sex work often involves activity that occurs in private transactions in private spaces. But the association of sex work with sexual deviance makes it a matter of public regulation.¹³³ Meanwhile, discourses and attitudes about sex workers themselves inform how the law is interpreted and enforced, reflecting the fluidity between the formal and informal.¹³⁴ Popular discourses about sex workers' hygiene, impact on public health, and proclivities to upset public order all inform how the police approach them.¹³⁵

In this liminal space, this Article examines how subjective perceptions about sex workers' beauty, race, and sexuality influence the task of policing them. While scholars have observed the various ways that the State has expanded its tools of surveillance to discipline various communities,¹³⁶ this Article argues that police officers police beauty by exposing subjectively more desirable sex workers to heightened State surveillance.

¹³¹ P.A.J. Waddington, 44 BRIT. J. CRIMINOLOGY 284, 284–85 (2004) (reviewing LOADER & MULCAHY, *supra* note ††).

¹³² See Jessica N. Drexler, *Governments' Role in Turning Tricks: The World's Oldest Profession in the Netherlands and the United States*, 15 DICK. J. INT'L L. 201, 213 (1996) (“[P]rostitution enforcement is very time-consuming and police forces are generally short-staffed.”).

¹³³ Cf. Phil Hubbard, *Sex Zones: Intimacy, Citizenship and Public Space*, 4 SEXUALITIES 51 (2001) (discussing how certain types of sexual deviance are expressed and regulated in public spaces).

¹³⁴ Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 622 (2016) (“Police officers did not see their job as limited to defending the law-abiding members of the community from the criminal element; they also punished violations of the dominant social norms, leading to conflicts with community outsiders, especially minority ethnic and racial groups. This punishment could be as brutal as it was informal.” (citation omitted)).

¹³⁵ See generally Thusi, *supra* note 31.

¹³⁶ I. Bennett Capers, *Criminal Procedure and the Good Citizen*, 118 COLUM. L. REV. 653, 674–75 (2018) (The perception that the State is watching your activities induces “‘a state of conscious and permanent visibility.’ In this way, prisoners internalize a state of surveillance and a state of discipline; they behave as if they are being watched at all times. Actual continuous state surveillance is ‘unnecessary.’ Perceptual surveillance renders the prisoners compliant, subservient, docile, and good. Observation, even when invisible or imagined, becomes power.” (footnotes omitted)).

II. METHODOLOGY

A. An Introduction to Hillbrow, Johannesburg, South Africa

This Article is based on a two-year legal ethnography examining the policing of sex workers in Johannesburg, South Africa.¹³⁷ A legal ethnography requires the researcher to engage in data collection by becoming fully immersed in the research site through participant observation and then recording all observations in detailed field notes.¹³⁸ Legal ethnography reflects an understanding that the researcher herself can become an integral part of the data collection process because the researcher's social position is relevant in how participants interact with her and the data she is able to collect.¹³⁹ Accordingly, this Article engages in first-person narrative and self-reflection, which are common features in ethnographies.¹⁴⁰

I was clerking for the Constitutional Court of South Africa the first time I visited the Hillbrow community in Johannesburg, South Africa. The Constitutional Court is just adjacent to Hillbrow, yet many of my native South African co-clerks had never even entered the area. Several of my colleagues warned me about the danger that lurked right behind us in the Hillbrow community. There is a mythology about Hillbrow—one that is enough to frighten young lawyers from ever daring to enter this space in daylight.¹⁴¹ Hillbrow is an inner-city community in Johannesburg, South Africa, with a “reputation as a run-down neighbourhood ridden with drug dealing, prostitution, slumlord hijacking and violent crime.”¹⁴² Disappointed by the lunch options near the Court, I nevertheless decided to take a walk through this community. Immediately upon entering Hillbrow, I was struck by the hustle and bustle of its streets. Hillbrow is filled with high-rise apartment buildings with laundry hanging outside, graffiti sprayed on the sides of the buildings, and the honking of minibus “taxis” polluting the air.

¹³⁷ The use of legal ethnography reflects a “commitment to producing an understanding of legal structures and actors through thick and intimate descriptions that rely on personalized narratives.” See Irus Braverman, “*The Tree Is the Enemy Soldier*”: A Sociolegal Making of War Landscapes in the Occupied West Bank, 42 L. & SOC’Y REV. 449, 453 (2008) (citation omitted).

¹³⁸ HARRY F. WOLCOTT, *ETHNOGRAPHY: A WAY OF SEEING* 276 (1999).

¹³⁹ See *id.* at 176–77.

¹⁴⁰ *Id.* at 111, 283–84; see Patricia Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 L. & SOC’Y REV. 197, 203 (1995) (“Relying on narrative as a method of research is underwritten by an assumption that narratives provide a lens or window through which we can best study social life.” (citation omitted)).

¹⁴¹ Russell West-Pavlov, *Inside Out—The New Literary Geographies of the Post-Apartheid City in Mpe’s and Vladislavić’s Johannesburg Writing*, 40 J. S. AFR. STUD. 7, 7 (2014).

¹⁴² *Id.*

Groups of young men chat outside apartment building entrances, and hawkers sell goods as diverse as bananas, chewing gum, and live chickens.

The streets are crowded with Africans from around the continent and are filled with the various vernaculars as you walk down the street. During this initial visit, I saw no white people (which is unusual for many parts of Johannesburg) and many black African faces on the streets, which were pulsating with an intense energy. Hillbrow is vibrant and full of life. I ended up eating at a fish and chips spot down the road from the Court.

This visit sparked my interest in the area, one clouded by its reputation for illegality and crime. Hillbrow's high-rise buildings include residences, hotels with transient housing, commercial interests, strip clubs, bars, and sophisticated criminal syndicates that charge cheap, daily rents.¹⁴³ Hillbrow is one of the most densely populated areas in Africa and has an estimated population of 75,000 people crammed into just 1.08 square kilometers.¹⁴⁴ Hillbrow is well known as a red-light district, although it is no longer a site for visible street-based sex work. In a 2002 survey of Hillbrow hotels, 27% of women living in the hotels admitted to working as sex workers.¹⁴⁵

¹⁴³ Building "hijackings" occur when criminal enterprises illegally seize inner city buildings in Johannesburg and function as the landlords of those buildings in the absence of the lawful landlords. Lea Jacobs, *Building Hijackings on the Rise*, PRIV. PROP. (Apr. 30, 2015), <http://www.privateproperty.co.za/advice/news/articles/building-hijackings-on-the-rise/3312> [<https://perma.cc/5QT3-8WRZ>].

¹⁴⁴ Jonathan Stadler & Charles Dugmore, Commentary, "*Honey, Milk and Bile*": A Social History of Hillbrow, 1894–2016, 17 BMC PUB. HEALTH 7, 7 (2017).

¹⁴⁵ See Ted Leggett, *A Den of Iniquity? Inside Hillbrow's Residential Hotels*, 2 S. AFR. CRIME Q. 19, 21–22 (2002).

FIGURE 1: PICTURE OF HILLBROW



Note: Picture of Hillbrow, taken from Wikimedia.

The commanding Hillbrow Police Station, a large station that spans multiple buildings, is charged with maintaining public safety in this bustling community. The main police station building is six stories high. The upper levels include various offices for ranking police members. There are also meeting rooms on the different floors, and brightly colored flyers that advertise the different police meetings near the elevator for each floor. Once you walk into the main building, there are police officers seated behind a long front counter, addressing community complaints and needs. There are usually around eight police officers behind the counter, and there is an endless flow of community members waiting to file complaints, certify documents, and meet with detectives. During my ethnographic fieldwork, I met with my police officer partners in this front lobby area to accompany them on their daily patrols of different brothels.

B. Research Methods

1. The Utility of Ethnography in Researching Sex Work

An ethnographic approach is particularly useful in obtaining a greater understanding of the policing of sex workers because deeply engrained

cultural values inform such policing.¹⁴⁶ Police often incorporate their personal moral and cultural values into the policing task.¹⁴⁷ Understanding whether and how these values influence the policing of sex work, a research object subject to value-based judgments and cultural marginalization, is a significant component of any understanding of the policing itself. Such cultural values are not easily quantified but may be revealed through an ethnographic approach, which focuses on the subjective perspectives of the social actors in question.¹⁴⁸ Ethnography allows the researcher to explore how subjective values influence policing by allowing the researcher to participate in and observe the everyday occurrences within policing. I was able to study how popular discourse about sex workers, including perceptions of public health and public hygiene, influenced the everyday policing of sex workers. Ethnography into the reality of policing allows the researcher to observe the inconsistencies between police practice and police policy. It provides understanding that can only be reached through in-depth observation of the research object over time and allows for the observation of how police may change their behaviors over the course of time.¹⁴⁹

I chose ethnography because this method allowed me to consider how the history of policing sex work in South Africa manifested itself in the actual policing of sex workers in Johannesburg and how discourse surrounding female sexuality impacted that policing. I was not only able to

¹⁴⁶ Cf. Jamie Rowen, *Mobilizing Truth: Agenda Setting in a Transnational Social Movement*, 37 L. & SOC. INQUIRY 686, 693 (2012) (“[Q]ualitative field methods, particularly ethnography, are usually site specific, premised on developing intimate knowledge about a particular place through sustained interactions with social actors.” (citations omitted)).

¹⁴⁷ See, e.g., JEROME H. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY* 38–39 (Macmillan College Publishing Co., 3d ed. 1994) (1966); Egon Bittner, *The Police on Skid-Row: A Study of Peace Keeping*, 32 AM. SOC. REV. 699, 701–04 (1967) (discussing policemen’s role as peace keepers as often based on personal or moral reasons); cf. Mona Lynch, *Waste Managers? The New Penology, Crime Fighting, and Parole Agent Identity*, 32 L. & SOC’Y REV. 839, 852–54 (1998) (discussing how parole officers’ personal perceptions about risk influenced how they managed parolees); Aaron Roussell, *Policing the Anticomunity: Race, Deterritorialization, and Labor Market Reorganization in South Los Angeles*, 49 L. & SOC’Y REV. 813, 818 (2015) (discussing community policing in the LAPD).

¹⁴⁸ See Monique Marks, *Researching Police Transformation: The Ethnographic Imperative*, 44 BRIT. J. CRIMINOLOGY 866, 870 (2004) (“If culture is to mean ‘deep level assumptions,’ then it cannot be read off structural arrangements or quantifications of police attitudes. Instead, researchers need to take an ethnographic approach, whereby they prioritize the social actor and his/her subjective orientation . . .”).

¹⁴⁹ See LOSHINI NAIDOO, *Ethnography: An Introduction to Definition and Method*, in AN ETHNOGRAPHY OF GLOBAL LANDSCAPES AND CORRIDORS 1, 2 (Loshini Naidoo ed., 2012) (explaining that the flexibility of ethnography allows the research to adapt over time and how the epistemological framework of ethnography allows the researcher to be aware of changes in the research subjects’ behavior).

observe the behaviors of police and sex workers at my research sites, but I was also able to understand and interpret their behaviors in light of the legal, historical, and social contexts in which they were taking place. Ethnography is often used to help describe and interpret human behavior as situated within larger social structures.¹⁵⁰ It typically investigates a particular case or cases to explore complex social constructs to advance theoretical development.¹⁵¹

Ethnography studies the natural setting of the research object and interprets the subjective interactions that occur within it.¹⁵² It allows for the empirical to become theoretical through the interpretation of the ethnographic data and explanation of why certain behaviors occurred. I collected ethnographic data through participant observation, which requires the researcher to both actively participate in and observe the natural environment of the research subjects.¹⁵³ Although time-consuming and not always specific to the research aim, participant observation is critical in revealing the distinctions between expressed conduct and actual conduct. It is capable of exposing biases, routine behaviors, and understandings that research participants would rather not explicitly express.¹⁵⁴ It requires more than sitting back and watching. It requires that the researcher actively participate in the conduct of the informants, including their spoken and unspoken conduct and circumstances, and continuously engage in data collection through extensive field notes.¹⁵⁵ Through participant observation, I observed the gaps between what police officers said the law required, and how they actually practiced their roles as enforcers of the law. Moreover, because sex work can be such an uncomfortable subject for strangers to discuss, I expected that police officers might be less willing to openly share how they really felt about the topic and might feel judged if their opinions deviated from dominant social mores. With a topic like this, and with an

¹⁵⁰ See generally JOHN D. BREWER, *ETHNOGRAPHY* 56–57 (2000).

¹⁵¹ Laura Krefting, *Rigor in Qualitative Research: The Assessment of Trustworthiness*, 45 AM. J. OCCUPATIONAL THERAPY 214, 215 (1991).

¹⁵² HARRY F. WOLCOTT, *ETHNOGRAPHY: A WAY OF SEEING* 242 (2d ed. 2008).

¹⁵³ See generally Coel Kirkby, *Law Evolves: The Uses of Primitive Law in Anglo-American Concepts of Modern Law, 1861–1961*, 58 AM. J. LEGAL HIST. 535, 545 (2018) (“[S]ocial anthropologists shared a faith in the method of participant observation to produce scientifically valid truths about the cultural functions and social structure of primitive societies.”).

¹⁵⁴ See Timothy Zick, *Cross Burning, Cockfighting, and Symbolic Meaning: Toward a First Amendment Ethnography*, 45 WM. & MARY L. REV. 2261, 2314 (2004) (describing the ethnographer’s field notes as “the bread and butter of ethnographic participant observation”).

¹⁵⁵ Panel Discussion: *Ethnographic Evidence*, 13 NW. J.L. & SOC. POL’Y 138, 139 (2018) (remarks by Professor Christena Nippert-Eng) (“At its core, ethnography is a methodological toolkit used by a variety of researchers to study populations and processes *in situ*. We do our research in the field. That research centers on three activities: observation, conversation, and participation. These three activities are used in various permutations with various degrees of formality.”).

institution reputed to be insular and secretive, participant observation became a tool to pierce the blue veil.

2. *Research Design*

In light of ethnography's unique benefits for collecting data on the intersection of policing and cultural norms surrounding sex work, I conducted a more than two-year legal ethnographic study from 2012 to 2015 to study the policing of sex workers in Johannesburg, South Africa. My research began with approximately 900 hours of participant observation over the course of approximately five months in the field, building rapport with police and sex workers; more than 1,000 hours of additional participant observation over the course of eighteen months; over thirty hours of semi-structured interviews with research participants; and one focus group with fifteen research participants, discussed in further detail below. I took copious field notes that recorded my participant observation that were typed and stored in my laptop. The interviews were recorded on my cellular phone and transcribed by a professional transcription company. Interviewees were promised confidentiality and that the "notes, raw data, and footage from the research study will be kept in a password-protected computer and only a researcher from this study will have access to it." Some of those interviews and field notes were provided to the Northwestern University Law Review with some redaction, and others remained on file only with me. I conducted a thematic content analysis of the field notes and interview transcripts to identify prominent themes in the collected data.

a. *Site Selection*

Although the first time I wandered into Hillbrow I did not do so in search of a research subject, I quickly realized the neighborhood's rich potential as such. I selected Hillbrow because of its reputation as a hot spot location for sex work transactions.¹⁵⁶ There have been previous studies in Hillbrow about the prevalence of sex workers,¹⁵⁷ and I was primarily concerned with the policing of sex workers.

b. *Data Sources*

The field observations consisted of my personal observations of the police's routine activities. I joined police during their routine patrols of sex workers between 6:00 PM and 6:00 AM, three to five times each week. Every afternoon, police officers in the visible policing unit are assigned to

¹⁵⁶ See Leggett, *supra* note 145, at 19–22.

¹⁵⁷ See, e.g., Jonathan Stadler & Sinead Delany, *The 'Healthy Brothel': The Context of Clinical Services for Sex Workers in Hillbrow, South Africa*, 8 CULTURE, HEALTH & SEXUALITY 451, 453 (2006) (describing the studies on the prevalence of sex work in Hillbrow).

patrol particular neighborhoods within Hillbrow. I joined the patrols of officers who were assigned to patrol brothels during their evening patrols. I also spent significant time within the police stations to contextualize the policing of sex workers within the larger policing task and to understand how they worked with their communities. Although I did not literally participate in policing by directly responding to community complaints or carrying a firearm, I did accompany police members during routine patrols to respond to complaints and during traffic stops. I attempted to maintain as much proximity to the policing task as legally permissible.¹⁵⁸ These observations helped me appreciate the exhaustion police members experience during twelve-hour shifts, and this appreciation gave me empathy for them and allowed me to see how quickly an acrimonious encounter with a sex worker could turn into an instance of harassment or worse.¹⁵⁹ During this period, I also independently visited and observed the places where sex workers provided services to interact with sex workers directly.

I conducted semi-structured interviews following the five months of field observation with research participants.¹⁶⁰ The interviews were in-person interviews that were recorded with the permission of the research participants. I developed an interview protocol with specific survey questions that I asked all interviewees. However, the interview protocol allowed for enough flexibility to ask different follow-up questions and to improvise as appropriate. The interviews occurred in the Hillbrow Police Station. These interviews focused on police officers' everyday interactions with sex workers, their attitudes about the legal rules concerning sex workers, and their observations about how sex workers are policed. In 2015, there were 498 police officers at the Hillbrow police station, and interviewees were chosen based on their participation in visible policing and their availability to participate in the project. I interviewed nineteen police officers. The sample is relatively small, but as Professor Margaret Sandelowski has argued, "[Q]ualitative analysis is generically about maximizing understanding of the one in all of its diversity; it is case-oriented, not variable oriented."¹⁶¹ Accordingly, smaller samples are typical of

¹⁵⁸ While there were no explicit bars on my activities, I was never allowed to physically apprehend or arrest a suspect.

¹⁵⁹ Jacqueline H. Watts, *Emotion, Empathy and Exit: Reflections on Doing Ethnographic Qualitative Research on Sensitive Topics*, 3 MED. SOC. ONLINE 3, 8–9 (2008) (examining the role of empathy in ethnographic studies in building rapport with research participants and facilitating access).

¹⁶⁰ WOLCOTT, *supra* note 138, at 46–50 (describing the ethnographic approach to research including the use of participant observation).

¹⁶¹ Margaret Sandelowski, *Focus on Qualitative Methods: Sample Size in Qualitative Research*, 18 RES. NURSING & HEALTH 179, 180 (1995).

qualitative research, which is concerned with depth and rich description. “An adequate sample size in qualitative research is one that permits—by virtue of not being too large—the deep, case-oriented analysis that is a hallmark of all qualitative inquiry, and that results in—by virtue of not being too small—a new and richly textured understanding of experience.”¹⁶² Qualitative research is concerned with achieving depth and providing description and need not be generalizable.¹⁶³

The sampling for the Hillbrow police interviews was convenience sampling. The ranking captain on the shifts during which I conducted my interviews would introduce me to the visible policing officers on shift. The visible policing unit includes police officers that are part of the public-facing part of the police force who engage in street patrols, including patrols of brothels. I would then interview all officers who were willing to participate in the study. I mitigated for the convenience sampling by randomizing the shifts during which I interviewed police officers. After interviewing twenty Hillbrow police officers, I had interviewed a little over 21.5% of the officers at the police station, and many of the officers charged with visible policing and responding to community complaints. These visible policing officers are the first line of contact for many sex workers in Hillbrow, and thus had relevant knowledge regarding my research questions.

Table 1 presents the demographic characteristics of the police participants from Hillbrow police station, including the age of the officer and tenure at the police department. Participants from Hillbrow police station comprised fourteen (73.3%) males and four (21.5%) females, with one participant who opted not to provide a gender. The age of Hillbrow police station participants ranged from twenty-five to fifty-three years old, with an average age of 39.79 (*SD* = 8.90) years. The participants worked at the police station for a range of one to thirty-six years, with an average of 18.81 (*SD* = 10.89) years of service. (One participant was unable to provide a response regarding their number of years at the police department because they did not remember the number.)

TABLE 1: AGE AND TENURE AT POLICE DEPARTMENT OF HILLBROW INTERVIEWEES

	<i>N</i>	Minimum	Maximum	Mean	Std. deviation
Age	19.00	25.00	53.00	39.79	8.90
Years at the police department	18.00	1.00	36.00	18.81	10.89

¹⁶² *Id.* at 183.

¹⁶³ *Id.* at 180.

The semi-structured interviews were centered around my research questions but allowed for flexibility in the discussion. I designed a standard survey instrument, which included questions about the police officers' perceptions about the various brothels in Hillbrow. This approach allowed the interviews to be open-ended and encouraged the participants to direct the conversation. Interviews with the nineteen police members were audio-recorded with the permission of the participants and later transcribed by a professional transcription company. I also conducted one focus group discussion with police officers from the Hillbrow police station comprised of fifteen participants each using the survey instrument. The data from the field observations, the nineteen semi-structured interviews, and the focus group discussion form the basis of the research findings presented in this Article. In order to protect the privacy and anonymity of all research participants, all participants have been anonymized and assigned fictitious names.

C. Methodological Experiences

1. The Experience of Field Work

In order to provide context to readers for how the research unfolded, the following entry from my field notes captures the everyday reality of patrolling with the Hillbrow police at Hillbrow hotel-brothels. I took light notes on a small notepad while in the field and created more extensive detailed field notes the following day, which I typed:

After a couple of attempts at joining the Hillbrow police for patrols, I finally joined an officer patrol on October 1, 2013. I met with Colonel Bongani, and we were discussing my research aims in her office at around 5:30 PM. Colonel Bongani, a 40-ish black¹⁶⁴ woman, is a colonel for the CIC of the Hillbrow police station and is charged with doing community-related police work. She has coordinated the work of other researchers and is quite familiar with the process. Her office is located on the fifth floor of the police station and is average-sized with a sterile feeling about it, although there are minor touches of her personal decor in it, including a polyester pillow and photos of her family.

After we discussed my research objectives for a few minutes, she contacted the captain on duty that evening and attempted to arrange a patrol for me to join.

¹⁶⁴ In South Africa, the primary racial categories are Black, Coloured, Asian, and White. Someone who is considered to be Black in South Africa would also be considered to be Black in the United States, where the Black category is broader than the definition of Black in South Africa. Coloured refers to multiethnic people who are of both Black and White origin, or Asian origin, who hold an "intermediary" status within the social hierarchy in South Africa. See Mohamed Adhikari, *Hope, Fear, Shame, Frustration: Continuity and Change in the Expression of Coloured Identity in White Supremacist South Africa, 1910–1994*, 32 J. S. AFR. STUD. 467, 468 (2006).

When that attempt to join a patrol fell through, I found myself milling around a group of officers on the ground floor gathering for their 6:00 PM to 6:00 AM shift. There was always a general hustle and bustle in the Hillbrow police station around this time. There were community members waiting in line to file complaints and get documents certified near the seating area. Behind the desk were approximately six police officers handling various community members. There were a few offices behind the front desk, where officers sign in and submit relevant paperwork before beginning their shifts.

I waited quietly as Colonel Bongani informed members about my research and appeared to be organizing my patrol. Colonel Bongani began speaking to several officers in Zulu, and the officers seem[ed] a bit reticent about having me accompany them. Because I did not understand the language, I was a bit confused by the interactions. After waiting for around an hour, I finally joined two officers for a patrol. The officers were at first a bit confused by my research but eventually agreed to have me join their patrol after Colonel Bongani provided a full explanation of my study. I joined the patrol of Officers Sam and Thulo, taking my place in the back of a four-door police sedan. They were both black officers in their 40s, each with approximately 12 years on the job. They interacted with each other in Zulu, but Officer Sam soon began to interact with me in English. He asked me what I would like to do that evening, and I explained that I would just like to see their ordinary patrol. He suggested that we visit a few of brothels, and I agreed.¹⁶⁵

This field notes entry introduces the first of many evenings I patrolled around Hillbrow with police officers. I sat in the patrol car while the officers spoke to each other in Zulu with a bit of English every now and then to keep me engaged. They asked me about my family, where I was from, and how far I was in my studies. I felt that they were trying to socially place me and to interpret where I fit into their understanding of the world.

These types of sex work patrols quickly became typical of my nighttime visits with Hillbrow police officers, which began to morph into tours, during which the officers would serve as my dutiful guides, providing me with all their insights about the various brothels, sex workers, and the industry in general. I spent time exploring the brothels on my own during these patrols, but also of my own accord. For example, I always looked curiously at the upper levels of the brothels where the sex workers had their individual rooms, to which, of course, I never received a managerial escort.

2. Researcher–Participant Dynamics

Participant observation proved to be the most appropriate methodology for exploring the sensitive subject of how sex workers are policed. The police were initially hesitant to speak candidly with me about their experiences with

¹⁶⁵ Field Notes Entry (Oct. 1, 2013) (on file with author).

sex workers. They were suspicious of me, a black American woman, and speculated about my intentions. They would frequently question me about my origin and my family background in an attempt to “place” me. Several of them thought I was young and would speak to me as if I were their child. They frequently questioned the purpose of my research and often told me that I would learn nothing from joining them on their patrols. In many respects, it appeared to be an exercise of masculinity, as these male police members thought it was their right to put me in my place and lecture me about my research object.¹⁶⁶

Some police officers worried that I would place myself in danger. They would frequently put on a performance to assert their masculinity, such as bragging about the danger of the job or displaying their firearms for me.¹⁶⁷ There was a constant performance of black, urban male masculinity in the form of bravado and displays of physical strength.¹⁶⁸ Some police officers seemed to view me as a woman who needed protection and would provide me their unsolicited guidance during the course of my research project.

However, as the police grew familiar with me, their concerns dissipated. Their behavior became natural and they would speak casually with each other in my presence. They were no longer stiff around me. This evolution occurred rather quickly, and within just a few weeks of my joining their patrols, they had become comfortable with me. Even so, given the sexual nature of the topic of sex work, police officers often relied on innuendo and suggestion when admitting to unlawful conduct or confirming that they had previously engaged sex workers. They told many dirty jokes, and members became comfortable discussing their perceptions of the various sex workers and brothels with me. While patrolling with police, I was careful to wear

¹⁶⁶ See Morrell et al., *supra* note 34, at 13–14 (discussing the expressions of various forms of South African masculinities, including a black, urban form).

Forty percent of households are female headed The mean age of marriage for women is twenty-eight years, whereas the majority of women have their first child before the age of twenty-one. Fathers often have little or no role in the upbringing of their children. In 1993, some 36 percent of children had absent (living) fathers and 57 percent had fathers who were present. By 2002, the proportion of children with absent (living) fathers had jumped to 46 percent, while the proportion of present fathers dropped to 39 percent The female homicide rate is . . . highly elevated, at six times higher than the rate worldwide, and at least half of female victims are killed by their male intimate partners. The country also has an alarmingly high level of rate of rape. Fifty-five thousand rapes of women and girls are reported to the police every year, which is estimated to be at least nine times lower than the actual number. In a population-based survey, 28 percent of men interviewed disclosed having raped.

Id. (citations omitted).

¹⁶⁷ See *id.* at 21–22 (noting that “[g]uns are a key feature of hegemonic masculinity” (citation omitted)).

¹⁶⁸ *Id.* at 18.

clothing that was dark and loose fitting, as a way of masking my femininity from the officers. I wanted to appear as neutral as possible and did not want them to perceive me as a potential mate. I was a researcher and needed to be perceived as such. This approach allowed me to be perceived as a fellow (albeit nonsexualized) colleague. Nonetheless, there were uncomfortable moments. One married police member suggested that I act as his girlfriend to protect him against the advances of sex workers. In moments like this, I would often subtly deflect the conversation because I did not want to appear uptight and did not want officers to become less comfortable around me. But I also did not want to pave the way for sexual advances or suggest that my pretending to be his girlfriend would ever lead to a romantic relationship. This required that I constantly negotiate my position and monitor officers' perceptions of me.

Finally, in order to explore my research questions in greater detail, I asked officers a number of questions about the sex workers in various establishments and how frequently they patrolled these venues, and analyzed these self-reported metrics.

3. *Limitations*

This legal ethnography is a case study of a particular police station.¹⁶⁹ It is a case study confined to my observations at a particular location and did not involve the collection of data from multiple police stations throughout South Africa.

III. QUALITATIVE RESEARCH FINDINGS ON SEX WORK AND POLICING IN HILLBROW, SOUTH AFRICA

Part III lays out the primary findings from this ethnographic research, as follows. First, drawing on notes from field observations and semi-structured interviews with sex workers and police officers, Sections A and B portray the landscape of sex work in Hillbrow, including where sex workers offer services and how the police regulate them. These Sections show sex work is largely sanctioned in the Hillbrow community through the loose police oversight of six brothels, though sex work continues to be illegal in South Africa. Next, Section C describes the ways that officers characterize and express preferences for certain types of sex workers within this community. Finally, Section D presents the ways that officers' perceptions of sex workers affect how they police sex work in order to provide further

¹⁶⁹ See generally Mario Luis Small, 'How Many Cases Do I Need?': *On Science and the Logic of Case Selection in Field-Based Research*, 10 *ETHNOGRAPHY* 5, 24–27 (2009) (describing case-study logic).

detail in Part IV about how the preferences these officers express correlate with race.

A. An Overview of Sex Work in Hillbrow

Sex work, particularly illegal prostitution, is predominately confined to a number of brothels across Hillbrow. The police accompanied me to many of these venues—either driving me by or escorting me in—throughout my field observations. These venues included a nondescript hotel that blends into Hillbrow, called the Maxime. As we passed, I was told that the owner of the Maxime is “some Mozambican guy.”¹⁷⁰ He is apparently quite the entrepreneur and owns several such establishments in Hillbrow. The Maxime is one of a number of brothels throughout Hillbrow within this general quality and price point. Another venue, the Razzmataza, a large venue with a parking lot directly adjacent to it and a graffiti-sprayed green fence, is most active on Friday and Saturday nights. The Ambassador Hotel appeared to be similar to the Maxime because it was also a nondescript building that blended into the general inner-city landscape. Another, the Hillbrow Inn, was described as being in the same class of service as the Maxime and the Ambassador. At the Maxime, the Hillbrow Inn, and the Safari, the sex workers charged R150 for intercourse.¹⁷¹

These brothels ranged in cost, reputation, and environment. For example, the Summit Club is an infamous upscale club,¹⁷² which I myself saw advertised by a huge banner over the Nelson Mandela Bridge in Newtown. Summit Club provides a total experience. There is a naked woman in bright lights posted on its exterior, and it appears to be a strip club from the exterior. It is very clean and about as well decorated as a gauche Las Vegas casino. Not only does Summit Club serve drinks and meals, but it also has a swimming pool, a full gym, and private rooms on the top levels. The parking lot, filled with Mercedes-Benzes and BMWs, is a testament to the caliber of men the club attracts. It is obviously designed to cater to well-to-do businessmen venturing to the notorious Hillbrow enclave.

Summit Club is in many respects the epitome of the Hillbrow brothel. It represents what many of the other clubs aspire towards: the gold standard.¹⁷³ The cost of services from sex workers at Summit Club is pricier

¹⁷⁰ Field Notes Entry (Oct. 1, 2013) (on file with author).

¹⁷¹ *Id.* R150 equals approximately \$9.19 USD at the time of publication.

¹⁷² Field Notes Entry (Oct. 1, 2013) (on file with author). I visited Summit Club at various times of day, both with a police escort and without one, on multiple occasions over the course of two years.

¹⁷³ *Id.*

than that of Maxime or Razzmataza.¹⁷⁴ The women at Summit Club were generally relatively thin, and several wore long weaves with Brazilian hair.¹⁷⁵ Both sex workers and clients have informed me that the sex workers in Summit Club are mostly black South African women and that they cater to men who have a particular desire for upscale sex workers that fit into popular subjective norms of beauty which include women with long hair, light skin, thin bodies, and flashy outfits.¹⁷⁶ The attraction to the women at Summit Club, however, was not restricted to particular ethnic groups; in fact, the clientele was quite diverse, depending on the time of day. During the daytime, old white men salivated at the gyrating bodies on the dance floors.¹⁷⁷ I would visit Summit Club around noon on Saturdays and would frequently find older white men—who appeared to be as old as in their mid-eighties—viewing strip teases on the lower levels.

However, Summit was not the only high-end club in Hillbrow. The Royal Park Hotel, which looks like a mid-range hotel from its exterior, displays bright Royal Park Hotel signage in red lights.¹⁷⁸ It is an extremely large venue located in a well-kept building on a city block corner. According to the officers, the Royal Park is pricey, and several luxury vehicles were parked outside the hotel during one of their many visits there.¹⁷⁹ When the officers accompanied me there, we considered entering the club, but the officers informed me that Royal Park does not allow women to enter. When we did enter, the manager himself, a white man in his mid-thirties, described Royal Park as “merely a hotel” and insisted that management cannot control what the men do with the women whom the men find while frequenting the hotel. I decided to return to the venue on a different day, without the police escort, because the manager was a bit hesitant to speak in front of the police. But my conversations with the manager in the absence of the police did not reveal anything relevant about how the venue portrays itself.

1. The Regulation of Sex Work in Hillbrow

In Hillbrow, the police treated sex work differently depending on when and where it took place. First, the officers expressed different approaches towards public versus private displays of sex. Very few sex workers operated outdoors in Hillbrow because the Hillbrow police enforced a policy of

¹⁷⁴ *Id.*

¹⁷⁵ Field Notes Entry (Jan. 24, 2014) (on file with author).

¹⁷⁶ Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014).

¹⁷⁷ Field Notes Entry (Jan. 10, 2014) (on file with author).

¹⁷⁸ Field Notes Entry (Oct. 1, 2013) (on file with author).

¹⁷⁹ *Id.*

promptly removing street-based sex workers.¹⁸⁰ Before this policy went into effect, street-based sex workers operated near Golden Ceresta or Lilly and Johnston Streets.¹⁸¹ Several Hillbrow police officers confirmed that the police adopted a hardline approach that prohibited street-based sex work.¹⁸² For example, when I asked about street-based sex workers, Officer Sam told me: “We don’t have a problem with [prostitutes]. There are only hotels.”¹⁸³

Meanwhile, indoor forms of sex work are tolerated. Indeed, the policing of sex work in Hillbrow was primarily conducted through the negotiating of “licenses” between police and indoor establishments.¹⁸⁴ The police officers treated the brothels where sex work took place as mere hotels. One officer insisted that there are “no prostitutes” in Hillbrow and appeared to have equated street-based sex work with “real prostitution,” highlighting the importance of public versus private displays of sex work and what constitutes a disturbance that requires additional policing.¹⁸⁵ When describing the Maxime, for example, one officer told me that a service at the Maxime cost R150 and then quickly changed his vernacular to recognize that this form of sex work does not even warrant the distinction of “prostitution,” instead referring to these workers as “working ladies,” a more respectable term.¹⁸⁶ The officers referred to Razzmataza as simply a bar. According to the officers, working ladies just hang around and solicit clients, but again, “it is not a brothel”—or rather, it is not a formal brothel, although there are many prostitutes there.¹⁸⁷ It is “just a club.”

Officer Sam once informed me that sex work was not a priority for the police.¹⁸⁸ The Hillbrow police were no longer concerned with the sex work and left the clubs to their own devices. This policy changed about two years before I entered the field, around 2011.¹⁸⁹ The officers indicated that the police only raid brothels that do not have “licenses.” I was frequently told,

¹⁸⁰ See Field Notes Entry (Jan. 10, 2014) (on file with author); Interview with Police Leadership, in Hillbrow, S. Afr. (May 14, 2013).

¹⁸¹ Field Notes Entry (Oct. 1, 2013) (on file with author).

¹⁸² Interview with Police Leadership, in Hillbrow, S. Afr. (May 14, 2013).

¹⁸³ Interview with Officer S, in Hillbrow, S. Afr. (Oct. 1, 2013).

¹⁸⁴ Field Notes Entry (Oct. 1, 2013) (on file with author). I was not able to verify the details of how these negotiations took place.

¹⁸⁵ Field Notes Entry (Jan. 14, 2014) (on file with author); Interview with Police Leadership (May 14, 2013).

¹⁸⁶ Interview with Police Captain, in Hillbrow, S. Afr. (June 13, 2013).

¹⁸⁷ Field Notes Entry (Oct. 10, 2013) (partially redacted and on file with author).

¹⁸⁸ See Field Notes Entry (June 11, 2013) (on file with author).

¹⁸⁹ Interview with Station Commander, in Hillbrow, S. Afr. (June 9, 2013).

“If a brothel has a license, it is operating fine.”¹⁹⁰ However, sex work is illegal in South Africa, and there is no way to formally license a brothel.¹⁹¹

In fact, the brothels are only policed to ensure compliance with liquor licenses.¹⁹² The liquor chief at the Hillbrow police station organized regular compliance patrols of the brothels and further raids of the brothels. A compliance check ordinarily included two to six officers from the visible policing unit who would visit the brothel to ensure that they were complying with their liquor license. Compliance checks generally occurred in the public areas of brothels and did not include checks of sex workers’ rooms. In contrast, a raid involved up to twenty police officers from various units. Officers entered into sex workers’ personal rooms during raids and walked through the entire brothel. During these enforcement raids, police verified that the clubs were operating according to the terms of their liquor licenses.¹⁹³ These theatrical raids were attempts to produce social order and legitimize the conduct of police through enforcement of licensing agreements that protect brothels.¹⁹⁴ Sex workers and sex work clients reported that as many as forty police officers showed up during the raids and that the officers would check their rooms, ask the brothel managers for license documents, and walk through the brothel.¹⁹⁵ “[P]olicing everywhere relies on ‘well-directed social productions’ to maintain the mythic divide between good and evil”¹⁹⁶ The license raids were productions to reify police legitimacy and enforce hotel–brothel licensing schemes and were well-designed productions that displayed the police as enforcers of the law. I questioned police members about the nature of liquor licenses during a focus group discussion:¹⁹⁷

INDIA:	What sort of licenses do these brothels have?
SEVERAL:	There is a liquor license and hotel license.
INDIA:	How do you get a license?
SIPHO:	The licenses are through the liquor board.

¹⁹⁰ Field Notes Entry (Oct. 1, 2013) (on file with author); Transcript of Focus Group with Police (May 21, 2014) (partially redacted and on file with author).

¹⁹¹ Sexual Offences Act 23 of 1957 (S. Afr.).

¹⁹² Transcript of Focus Group with Police (May 21, 2014) (partially redacted and on file with author).

¹⁹³ *Id.*

¹⁹⁴ See generally Comaroff & Comaroff, *supra* note 70, at 824 (“Thus it is that, in their *imaginaire*, a metaphysics of *disorder*—the hyperreal conviction, rooted in everyday experience, that society hovers on the brink of dissolution—comes to legitimize a physics of social order to be accomplished through effective law enforcement.”).

¹⁹⁵ Field Notes Entry (Jan. 10, 2014) (on file with author).

¹⁹⁶ Comaroff & Comaroff, *supra* note 70, at 821.

¹⁹⁷ Field Notes Entry (Sept. 10, 2014) (on file with author); Transcript of Focus Group with Police (May 21, 2014) (partially redacted and on file with author).

- INDIA: Do you have to make sure that clubs are in compliance with their licenses?
- SAM: We enforce the law and must apply [it] in terms of the Liquor Act. If the license says that they must close at a certain time, we must check that they are complying with the requirements of the license. They must display the license outside in the front of the club and be clear. The police are ensuring that they don't sell alcohol at certain times and that they are meeting the requirements of the license.¹⁹⁸

These liquor licenses, however, did not make the sale of sex legal. In truth, the establishments were allowed to sell liquor and had specified closing times pursuant to the licenses.¹⁹⁹ However, curiously, several officers interpreted the procurement of these licenses as legal entitlement to operate a hotel-brothel. Some officers insisted on informing me that certain clubs were completely legal.²⁰⁰ There are two possible explanations for this. First, these officers were conflating the establishments' legal right to sell alcohol with a legal right to sell sex. Alternatively, these officers were alluding to additional "license" agreements that certain brothels entered into with upper-level members of the police force that allowed these brothels to operate without police interference. I believe that the latter may very well be the case. Although I was unable to obtain direct confirmation of my suspicions, several brothel owners did speak of an arrangement, or an "understanding," they had with the police.²⁰¹

Finally, as noted in Part II, during ordinary patrols with the police, the police allowed me to accompany them on visits to various brothels. The very nature of sex work is hidden and marginal, yet the police officers were all very well versed on how to identify these margins. Initially, I assumed that their knowledge of the Hillbrow sex industry was a natural consequence of police work. However, it quite quickly became clear to me that many of these officers were quite intimately aware of the brothels through their innuendos, jokes, and off-color commentary about the brothels. In fact, sex workers indicated that a good number of police officers frequented the brothels as customers. As I suspected, brothel managers and hotel-brothel sex workers

¹⁹⁸ Transcript of Focus Group with Police (May 21, 2014) (partially redacted and on file with author).

¹⁹⁹ *Id.*

²⁰⁰ Interview with Police Officer B, in Hillbrow, S. Afr. (Nov. 23, 2013).

²⁰¹ See GARETH NEWHAM, CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION, TACKLING POLICE CORRUPTION IN SOUTH AFRICA (2002) (discussing how police take bribes and exploit individuals in illicit markets); Gary Kynoch, *Apartheid Nostalgia: Personal Security Concerns in South African Townships*, 5 S. AFR. CRIME Q. 7, 9–10 (2003) (highlighting how South African police state that they take bribes because of their dissatisfaction with low salaries).

confirmed that plain clothes police officers frequented these establishments.²⁰² Although I grew close with several of the police officers, I never felt comfortable directly asking them whether they were brothel customers in my semi-structured interviews with them. However, sex workers provided further support of my suspicion that the officers themselves frequented the brothels as customers.²⁰³

B. Police Perceptions of Sex Workers

Police officers characterized the sex workers through language that embodied racialized notions of beauty. During my patrols with Hillbrow police station members, officers often spoke about sex workers using charged words, such as describing the sex workers as “professional” or “unprofessional,” thus attributing assorted values to the sex workers depending upon their perceived professionalism.²⁰⁴ One officer described the women working at the Summit Club as real “professionals,” and the women working there are reputed for being “beautiful,” and “know[ing] what they are doing.”²⁰⁵

Police officers therefore equated such so-called professionalism with the perceived beauty of the sex worker. The more beautiful sex workers were deemed to be more professional.²⁰⁶ They were more “about their business” and knew their jobs well.²⁰⁷ They were also more desirable. In the officers’ words, they “really know” their work.²⁰⁸ This theme of beauty and professionalism constantly recurred, especially as police officers began to feel more comfortable having casual conversations with me. The perceived beauty of sex workers seemed to deeply influence police perceptions of them and the required approaches towards policing them.²⁰⁹ Consistent with Professor Phil Hubbard’s theory that perceptions of sex and identity shape the urban landscape, the police officers seemed to commodify beauty in a

²⁰² Interview with Two Brothel Managers, in Hillbrow, S. Afr. (Jan. 10, 2014); Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014).

²⁰³ Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014).

²⁰⁴ Field Notes Entry (Jan. 24, 2014) (on file with author); Field Notes Entry (Oct. 1, 2013) (on file with author).

²⁰⁵ Field Notes Entry (Oct. 1, 2013) (on file with author); Field Notes Entry (June 23, 2013) (partially redacted and on file with author).

²⁰⁶ Transcript of Focus Group with Police (May 21, 2014) (partially redacted and on file with author).

²⁰⁷ *Id.*

²⁰⁸ *See id.*

²⁰⁹ *Id.*

way that correlated with how and where they targeted policing efforts across the various red-light districts.²¹⁰

Even more, these subjective views about the sex workers themselves seemed to manifest in how the officers regulated the industry. Beauty reproduced a spatialization of sex work: the spatial organization of where sex work occurred reflected subjective interpretations of beauty. In other words, the police officers' categorization of a sex worker as a particular class (for example, "beautiful" South African, female, light-skinned, thin sex worker)²¹¹ was spatially reproduced in the very geography of the various brothels. This spatialization is itself a reproduction of a patriarchal hierarchy that provides the standards for female beauty.²¹² Lighter and whiter was at the top of the hierarchy; darker and blacker was at the bottom. At the same time, this hierarchy is not expressed in the negative language of immorality, but in the positive, subjective language of appreciation of beauty.

This form of policing was a form of discipline that normalized standards about how sex workers should behave; it also was an exercise of power that proclaimed which bodies were valued.²¹³ In general, brothel-based sex workers were perceived as more hygienic and professional than street-based sex workers. Both police members and sex workers acknowledged this distinction:

²¹⁰ See generally Phil Hubbard, *Sexing the Self: Geographies of Engagement and Encounter*, 3 SOC. & CULTURAL GEOGRAPHY 365 (2002) (describing the ways that perceptions of sexual value and identity shape the urban landscape and create a geography of sexuality).

²¹¹ Imani Perry, *Buying White Beauty*, 12 CARDOZO J.L. & GENDER 579, 581 (2006) (describing a beauty standard that valorizes light and white skin in South Africa and other African countries).

²¹² See, e.g., NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* (HarperCollins 2002) (1991). But see Holly J. Wilmet, *Naked Feminism: The Unionization of the Adult Entertainment Industry*, 7 AM. U. J. GENDER SOC. POL'Y & L. 465, 495–96 (1999) ("Unlike modern feminists who decry beauty, femininity, and sexuality as weapons of a patriarchal plot to keep women submissive, strippers take what is inherently theirs—feminine sexuality—and they exaggerate it to extremes, using surgery, make-up and sensuous movements. Then, they confidently use their bodies as weapons against the very men who believe they are using the stripper. Playing on men's desires and arrogance, strippers manipulate these men into believing that they (the strippers) are attracted to them. Ultimately, the men pay for perpetuating such false and sexist beliefs with hard currency, if not increased sensitivity. If the beauty culture is truly a patriarchal plot against women, then the patriarchy has failed miserably, because, like Madonna, strippers know that sexuality is power, that power is money, that money buys independence, and in that independence is equality." (footnotes omitted)).

²¹³ See FOUCAULT, *DISCIPLINE AND PUNISH*, *supra* note 8, at 215.

MICHAEL (Hillbrow officer): In the clubs, they are professional because I think they are going to go to the hotel and they are using condoms so they are taking life professionally. By taking care of your life, that is professional. They are clean. Yes, I think that that is more professional.²¹⁴

These observations of police in the field are consistent with extant literature on the intersection of race, sex, and beauty. For example, scholars have documented the ways the subjective experience of desire reflects gendered norms: in South Africa, women perceived as appearing whiter or with lighter skin, with leaner bodies and straighter hair, were universally lauded.²¹⁵ These values were both drivers and products of apartheid; apartheid led to white and lighter skin being prized, while darker skin is often rejected.²¹⁶ Women who looked “foreign” with darker and blacker skin were at a lower level on the social ladder.²¹⁷ These perceptions reflected larger social forces that included positionality within a country that struggles with race and xenophobia.²¹⁸

²¹⁴ Interview with Police Officer D, in Hillbrow, S. Afr. (Nov. 12, 2013).

²¹⁵ See Tasneem Ansariyah-Grace, *Urbanisation and the Beauty Myth*, 1 S. AFR. FEMINIST REV. 99, 100 (1995) (discussing the prevalence of Eurocentric standards of beauty in Africa that value thin bodies and long, flowing hair); Jemima Pierre, ‘I Like Your Colour!’ *Skin Bleaching and Geographies of Race in Urban Ghana*, 90 FEMINIST REV. 9, 18 (2008) (“Even as some espoused relativism, ideas about race and beauty always proclaimed the superiority of white racial beauty and aesthetics, and was usually asserted in relation to people of colour around the world. With the entrenchment of global white rule, particularly ‘Anglo saxon’ supremacy, whiteness—specifically, white skin—represented virtue and civilization, further justifying European expansion.” (citation omitted)); Yan Yan & Kim Bissell, *The Globalization of Beauty: How is Ideal Beauty Influenced by Globally Published Fashion and Beauty Magazines?*, 43 J. INTERCULTURAL COMM. RES. 194, 210 (2014) (finding that South African magazines reflect Western standards of beauty) (“It is surprising to find the obviously westernized trend in South African magazines. US and European models were much more common than native African models even though the Caucasian ideals have few physical similarities with the readership. A majority of pictures in the fashion frames were snapshots from New York or Milan fashion collections, portraying models with typical western features, such as blonde hair and slim, tall bodies.”).

²¹⁶ See Lynn M. Thomas, *Consumer Culture and ‘Black is Beautiful’ in Apartheid South Africa and Early Postcolonial Kenya*, 78 AFR. STUD. 6, 12 (2019).

²¹⁷ Pierre, *supra* note 215, at 18; see also INGRID PALMARY, CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION, REFUGEES, SAFETY AND XENOPHOBIA IN SOUTH AFRICAN CITIES: THE ROLE OF LOCAL GOVERNMENT 4 (2002), <http://www.csvr.org.za/docs/foreigners/refugeessafetyand.pdf> [<https://perma.cc/FCB5-8SNC>] (noting that South Africans have been targeted as “illegal immigrants” because they have dark skin or walk in a “strange” manner).

²¹⁸ See generally SOUTH AFRICAN MIGRATION PROJECT, *THE PERFECT STORM: THE REALITIES OF XENOPHOBIA IN CONTEMPORARY SOUTH AFRICA*, MIGRATION POLICY SERIES NO. 50 (Jonathan Crush ed., 2008), <https://samponline.org/wp-content/uploads/2016/10/Acrobat50.pdf> [<https://perma.cc/XF9L-M322>]; PALMARY, *supra* note 217.

*C. The Influence of Police Perceptions on
Surveillance and the Regulation of Sex Work*

The subjective perception of beauty, as informed by race, was reflected in my observations of the policing task: the sex workers' "beauty" appeared to be a factor that influenced how they were policed.²¹⁹ It added subjectivity in the policing of sex workers that was inconsistent and subject to the tastes of the individual police officers. As this Section explains, policing became guided by the desires of the officers rather than by the objective of reducing crime, echoing discourses that have focused on sex workers as threats to public hygiene and public health that have been a part of the policing of sex workers in South Africa.²²⁰ In this way, the pernicious male gaze not only defined the hierarchal status of the sex worker body²²¹ but also determined the level of police scrutiny and interaction it must withstand. "[P]ower for a female derives from her ability to present herself in a sexualized fashion."²²²

In those brothels where the sex workers were denounced as less "professional," the police appeared less willing to engage in patrols.²²³ These brothels were presumed by the police to be bastions of violence and crime, and police avoided them. Indeed, this was reflected in where and whom the officers patrolled, and how they patrolled the venues. In fact, the policing in the different venues was also qualitatively different. In higher-end establishments, many sex workers appeared to be unaware about the extent of the police patrols and reported that they barely noticed the police activity although there were raids in these locations; one worker indicated that there

²¹⁹ See generally AM. PSYCHOLOGICAL ASS'N, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS 7 (2007), <https://www.apa.org/pi/women/programs/girls/report-full.pdf> [<https://perma.cc/F424-R4BC>] ("One of the dominant themes about sexuality reported across . . . studies and across magazines is that presenting oneself as sexually desirable and thereby gaining the attention of men is and should be the focal goal for women Nearly everything [magazines encourage] girls and women . . . to do in the line of self-improvement is geared toward gaining the attention of men.").

²²⁰ Thusi, *supra* note 31, at 222. While there might be some crime-fighting element in any type of policing, the fact that the police exercised their discretion to police locations with more desirable sex workers reflects that their crime-fighting tasks were not solely, or even primarily, driven by reducing crime. While I relied upon police officers' reflections about the frequency of raids of different brothels, I also reviewed the liquor chief's schedule to confirm that the "raids" occurred as frequently as the police officers indicated. These logs confirmed the officers' reflections, as did the data I collected from sex workers from the different brothels who recounted the various raids during the course of the research project.

²²¹ Michelle J. Anderson, *Sex Education and Rape*, 17 MICH. J. GENDER & L. 83, 91 (2010) ("Magazines, music videos, and advertising, for example, contain images and ideas that sexualize women. Young women's magazines, for example, are usually devoted to teaching females how to hold the male gaze . . .").

²²² *Id.* at 94.

²²³ Field Notes Entry (Oct. 10, 2013) (partially redacted and on file with author).

was no real police presence at Summit Club, noting that it is a registered brothel with a license it paid fees for.²²⁴

Sex workers confirmed that police members were more often patrons *at the high-end establishments*:

JANELLE (sex worker): At Summit, there are a lot of police as clients
and they are not in uniform, even white guys
come to drink.²²⁵

The influence of officers' perceptions of beauty on who and where they surveilled manifested throughout my field observations as well. As just one example, during one of my nighttime patrols in Hillbrow on January 10, 2014, I went to the police station to join one of the routine patrols to which I had become accustomed.²²⁶ I regularly accompanied Hillbrow police officers during their nighttime patrols, during which time we would respond to complaints, patrol clubs, and engage in routine police tasks. I had already joined the officers on several patrols of Hillbrow brothels and was familiar with several of them. On this particular evening, I asked whether we could visit Maxime brothel, as I had only driven past this hotel in the past during the police patrols and was interested in exploring it with the police. I had visited the club on my own during one of its live sex shows several weeks prior to this patrol and was curious to see how the club was policed. Officers John and Jimmy, who were my patrol partners for the evening, quickly protested this suggestion. They informed me that "those ladies" were not professionals and that we could be in imminent danger if we were to enter the club.²²⁷

I was surprised to hear this because the club did not appear particularly dangerous when I visited it for the sex show. Certainly, it was not an ordinary bar, but it was no dodgier than any of the other clubs in Hillbrow. The officers insisted that we should not go to this club and made offhand comments suggesting that the physical appearance of these sex workers left much to be desired. The officers emphasized that they personally did not want to visit this club *and recommended that I go on my own time*. They appeared to be more concerned about their personal safety and well-being than mine. They mentioned the lack of cleanliness of the venue and suggested that the sex workers who worked there were a bit "rough around

²²⁴ Interview with Maria, Sex Worker, in Hillbrow, S. Afr. (Jan. 24, 2014).

²²⁵ Interview with Janelle, Sex Worker, in Hillbrow, S. Afr. (Jan. 24, 2014).

²²⁶ Field Notes Entry (Jan. 10, 2014) (partially redacted and on file with author).

²²⁷ *Id.*

the edges.”²²⁸ They further claimed that two police officers had been shot outside the brothel two weeks prior and that it would be too dangerous to enter.²²⁹ The mention of the shooting was enough to deter my persistence. The officers were allegedly patrolling outside the club and were purposely struck by two shots from inside the venue. Officers Jimmy and John claimed that the building is incredibly dangerous and that the very sight of a police vehicle would be enough for some residents to shoot.

This cautionary tale served as my introduction to the officers’ tendency to link sex worker “beauty” to brothel danger and professionalism. I was fascinated by the connection between the perceived beauty of sex workers and their professionalism and the perceived danger in entering a particular club. I saw firsthand the fear these officers had at the proposition of entering the hotel. It is entirely possible that the officers were allocating police resources based on their fears of the various locations and beauty was not a direct cause of their choices. Nevertheless, whether indirect or direct, beauty is connected to who receives police surveillance and the form of police surveillance they receive.²³⁰ For example, police officers never expressed to me any hesitation about taking me to the clubs where they proclaimed that the sex workers were professional and beautiful. The officers at times suggested that I visit the less professional clubs on my own,²³¹ which I frequently did, suggesting that their concern was not for my safety or well-being. They often indirectly and directly indicated that they simply wanted to spend more time in spaces where the sex workers were more beautiful. They indicated that these sex workers were cleaner and more professional, and they preferred to spend time in these spaces. For example, the same evening that they refused to bring me to one club, the two officers accompanied me to visit the upscale Summit Club without any express hesitation. Officer Jimmy appeared to be good friends with the brothel management, and the manager appeared incredibly comfortable with the police officers. I sensed that Officer Jimmy had made many visits to Summit Club; he was intimately familiar with the staff and the club’s layout, the club manager and Jimmy greeted each other by name, and the manager offered us a warm welcome and a drink upon our entering. As we watched the semi-

²²⁸ *See id.*

²²⁹ Baldwin Ndaba & Rabbie Serumula, *Hired Cop Killers Jailed for Life*, INDEP. ONLINE (May 29, 2015, 7:38 AM), <http://www.iol.ca.za/news/crime-courts/hired-cop-killers-jailed-for-life-1.1864863#.VabANJNViko> [https://perma.cc/Z79V-QBH7].

²³⁰ *See infra* Part IV.

²³¹ Field Notes Entry (Jan. 10, 2014) (on file with author).

clothed workers walk past us, the officers reiterated that these ladies are professionals and reminded me that they are professionals.²³²

1. *Beauty and Sex Work*

There are benefits and burdens with being closely monitored by the police. If a crime prevention agenda, a presumed benefit of police protection, is the main motivation for police, then police should have focused on policing more dangerous spaces. Ironically, the fear of violence in these clubs kept some officers from entering them.²³³ After exploring several other Hillbrow clubs, I noted that they each had a distinct reputation with the police, and I began to explore how such perceptions influenced how these sex workers were policed. One hypothesis is that the more professional the sex worker, the less likely she is to be policed. This did not pan out in my findings, however. The police were more likely to interact with those sex workers they perceived to be professional and beautiful whether through raids, liquor checks, or other forms of official police presence. Beauty in some way appeared to result in higher scrutiny for the sex worker. This may be because the police preferred frequenting establishments where they would find women they believed were attractive.

As an initial matter, it is important to acknowledge that focusing on perceptions of beauty is inherently problematic. As some scholars note, beauty is ordinarily viewed as a constraint on women.²³⁴ It is a construction created by men that necessarily oppresses women.²³⁵ Feminists are generally suspicious of it, and the notion of spending any serious time evaluating it in academic work seems suspect.²³⁶ However, beauty merits particular attention in the context of sex work because, in many ways, it is an inherent means of evaluating sex workers in particular. After all, sex workers' clients evaluate them in part based on women's perceived beauty, as reflected in the prices

²³² Field Notes Entry (Oct. 1, 2013) (on file with author).

²³³ See Field Notes Entry (Jan. 10, 2014) (on file with author); see also Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIAMI L. REV. 425, 431–32 (1997) (discussing how police officers can have pretextual motivations for their actions, such as racial bias, that are not directly related to investigating crime).

²³⁴ See Ann J. Cahill, *Feminist Pleasure and Feminine Beautification*, 18 HYPATIA 42, 42 (2003) (“That beauty is a problem for feminist theory is clear. Feminists ranging from Mary Wollstonecraft . . . to Susan Bordo . . . have analyzed the phenomenon of feminine beautification as a crucial and oppressive moment in an overall patriarchal structure.”). But see Kathy Davis, *Remaking the She-Devil: A Critical Look at Feminist Approaches to Beauty*, 6 HYPATIA 21, 23 (1991) (“[T]heoretical explanations of feminine beauty practices need to be grounded in women’s own justifications for why they engage in these practices.”).

²³⁵ Cahill, *supra* note 234, at 42.

²³⁶ *Id.*

different classes of sex workers charge.²³⁷ Moreover, sex workers compete fiercely for clients, and fellow sex workers who do not understand their strong client demand accuse some sex workers of engaging in *muti*, or African magic.²³⁸

Sex workers self-reported that they organize themselves based on their perceptions of their own beauty and their ability to compete with sex workers from a particular locale.²³⁹ They also feel pressure to conform to certain standards and make decisions based on these pressures.²⁴⁰ For example, my key informant, Emile, informed me that she left Summit Club for greener pastures at Hillbrow Inn because she is heavier set and was unable to find work at Summit Club, where the women are much thinner. Mary, who was already relatively thin, recounted a story when the Summit Club manager admonished her weight and instructed her to spend more time in the enclosed gym.²⁴¹ Hotel–brothel owners and management enforced physical standards of the respective establishments.²⁴²

Beauty is highly subjective and may be difficult to study.²⁴³ However, exploring how perceptions of beauty influence approaches to policing sex workers provides an interesting arena for analyzing the intersection of gender, sexuality, and policing. In some ways, women who were “higher” on the beauty hierarchy had more control over their patrons and where they could work.²⁴⁴ They also tended to be higher earners.²⁴⁵

IV. THE ROLE OF POLICE IN ASSIGNING VALUE TO BODIES

A. Employing Quantitative Indicators to Supplement the Qualitative Picture of Policing in South Africa

At the same time that women deemed “more beautiful” had some control over their clients and locale, my field observations revealed that

²³⁷ See generally Asadul Islam & Russell Smyth, *The Economic Returns to Good Looks and Risky Sex in the Bangladesh Commercial Sex Market*, 12 B.E. J. ECON. ANALYSIS & POL’Y 1 (2012) (finding that there was a “beauty premium” wherein sex worker clients were willing to pay higher prices for services from sex workers they perceived as more beautiful).

²³⁸ ADAM ASHFORTH, WITCHCRAFT, VIOLENCE, AND DEMOCRACY IN SOUTH AFRICA 133–35 (2005) (explaining the concept of *muti*).

²³⁹ Interview with E, in Midrand, S. Afr. (Nov. 10, 2014).

²⁴⁰ *Id.*

²⁴¹ Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014).

²⁴² *Id.*

²⁴³ See Cahill, *supra* note 234, at 44.

²⁴⁴ Hubbard, *Sex Zones*, *supra* note 133, at 60 (quoting PAT CALIFIA, PUBLIC SEX: THE CULTURE OF RADICAL SEX 205 (1994)).

²⁴⁵ Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014) (explaining that Summit Club regulates weight standards but was worthwhile for the higher income).

perceptions of beauty seemed to correlate with increased levels of surveillance and regulation of the more “beautiful” sex workers by the police. In order to explore this trend in greater detail, I asked officers a number of questions during the semi-structured interviews about the sex workers in Hillbrow, including how frequently they patrolled the various brothels. I then analyzed these self-reported metrics, which are presented in the pages that follow. Overall, I found that the women most likely to receive greater scrutiny were more likely to appear lighter and meet European standards of beauty, and police engaged in a type of benevolent surveillance of these sex workers.

In exploring this hypothesis, I focused on six clubs that fell across the spectrum of clubs in Hillbrow. I visited each of these clubs on five to fifteen separate occasions and spent several hours in each without a police escort to get a sense of their clientele, reputation, and energy. They were all located within a few blocks of each other within the square mile that comprises the Hillbrow community. They were all similarly sized. I selected the Royal Park Hotel, a high-end hotel with flashing lights and a significant international sex worker population that includes Thai and Russian sex workers; Summit Club, a high-end club that specializes in “beautiful thin South African women with Brazilian weaves;”²⁴⁶ Maxime Club, a mid-range club with a notorious weekly sex show; Hillbrow Inn, a mid-range club with a significant portion of clients from Zimbabwe that specializes in “thick” women;²⁴⁷ German Club, a mid-range club that I learned from informal interviews with several Hillbrow police officers is reputed to have thinner and younger sex workers and is patronized by older white men; and Kilimanjaro, a low-end, casual establishment that serves food and is reputed for its affordability.

Hillbrow police member interviewees were asked to rate the beauty of sex workers in the different clubs on a scale from 1 (most beautiful) to 6 (least beautiful). Using this same approach, I also asked police interviewees about their perception of professionalism on a scale of 1 to 6, and about the perceived number of foreign sex workers at each club on a scale of 1 to 6. Further, I asked them to self-report how often they raided each venue, defined as pre-scheduled visits to conduct a liquor license compliance check, including the private rooms where sex work transactions occurred. I obtained and ranked the means for each topic. The ranks were then inversed such that a higher rank would represent more beauty, more professionalism, fewer foreign sex workers, and more raids, respectively. The following graphs in Section B present these rankings.

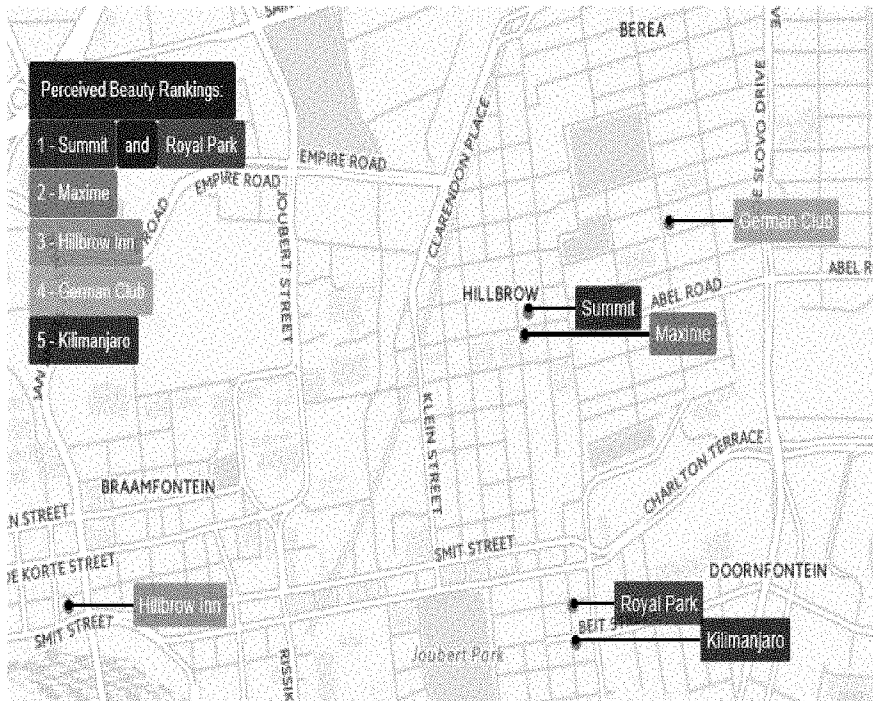
²⁴⁶ *Id.*

²⁴⁷ Interview with Sex Worker (Oct. 16, 2013).

B. Officer Ranking

Amongst the six clubs, Summit Club and Royal Park tied for the highest ranking of beauty of sex workers, followed in descending rank by Maxime, Hillbrow Inn, German Club, and Kilimanjaro.

FIGURE 2: MAP OF BROTHELS AND THEIR BEAUTY RANKINGS



Note: 1 corresponds with most beautiful, 5 with least beautiful.

Foreignness has a particular meaning within the South African context.²⁴⁸ Much of the foreign migration into South Africa is from nearby

²⁴⁸ See Thomas F. Hicks, *The Constitution, Aliens Control Act, and Xenophobia: The Struggle to Protect South Africa's Pariah—The Undocumented Immigrant*, 7 IND. J. GLOBAL LEGAL STUD. 393, 394 (1999) ("The South African Department of Home Affairs, police, general public, and others involved in immigration enforcement matters have abused, and at times violently assaulted, undocumented immigrants in a xenophobic environment which perpetuates human rights violations and deprives immigrants of constitutional protections guaranteed by the 1996 Constitution's Bill of Rights. The influx of immigrants has increased the pressure upon the South African government to utilize its limited resources for its citizenry and fulfill its promises of economic and social reform. A culture of xenophobia, evidenced by negative perceptions of and increased violence against immigrants, has quickly materialized and consumed South Africa's consciousness. Within this setting, South Africans have developed a tendency to scapegoat immigrants by blaming them for the country's domestic problems. Suspected undocumented immigrants receive the brunt of the public's wrath." (footnotes omitted)).

countries on the African continent, and the people from these countries are often perceived to be blacker and darker than their South African counterparts.²⁴⁹ Accordingly, within a society that prizes light skin and whiteness, they are at the bottom of the society hierarchy.²⁵⁰ Public outcries against foreign migration sparked xenophobic harm against people who were perceived to be foreign.²⁵¹ Thus, in my research I invoked perceptions about foreignness as a proxy for race and how the sex workers perform their racial identity. Many South African sex workers work in “foreign” brothels.²⁵² But because they are darker and blacker and choose not to wear their hair in straightened and long hairstyles, they are labeled as foreign within the sex work market.

Hillbrow police member interviewees were asked to rate the number of foreign sex workers in the different clubs on a scale of 1 (highest number of foreigners) to 6 (lowest number of foreigners). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more foreign sex workers. The following graph shows the rankings of clubs in terms of higher number of foreigners. Amongst the six clubs, Summit Club was found to have the highest ranking for number of foreigners, followed in descending order by Maxime, Royal Park, Kilimanjaro, German Club, and Hillbrow Inn. I observed a significant number of Russian and Thai sex workers at Royal Park, who were fairer-skinned, which may have been a confounding factor in connection of foreignness to race in that brothel.

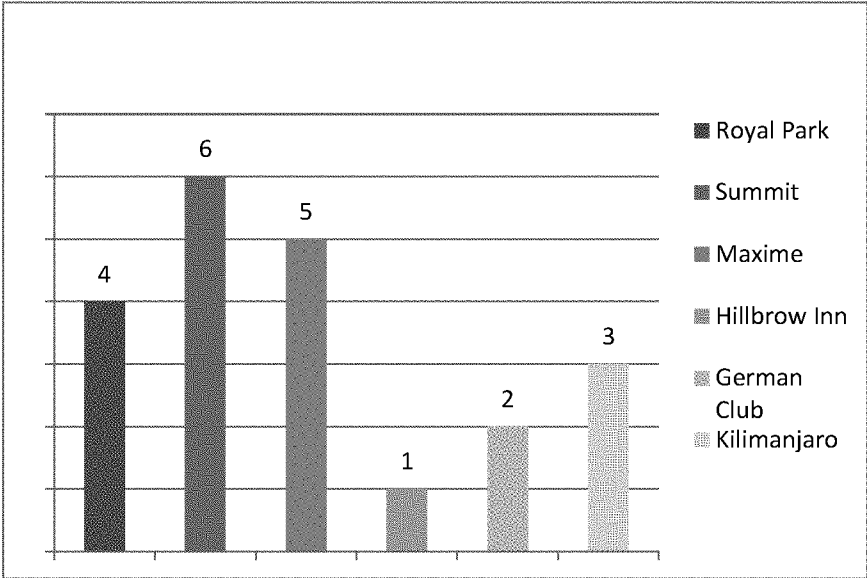
²⁴⁹ See E. Tendayi Achiume, *Beyond Prejudice: Structural Xenophobic Discrimination Against Refugees*, 45 GEO. J. INT’L L. 323, 332–33 (2014) (“In the case of xenophobic discrimination against refugees, race is a fundamental determinant of who among those of foreign national origin or nationality are deemed deserving of xenophobic harm. In other words, not all people of foreign national origin or nationality are equally vulnerable to harm on account of foreignness—vulnerability is a partial but significant function of race. This is evident in South Africa, where a white Zimbabwean refugee is unlikely to face the same risk of xenophobic discrimination as a black Zimbabwean refugee, who is an almost certain target, even at the hands of South Africa’s majority black citizens.” (footnotes omitted)).

²⁵⁰ See *id.*

²⁵¹ See *id.*

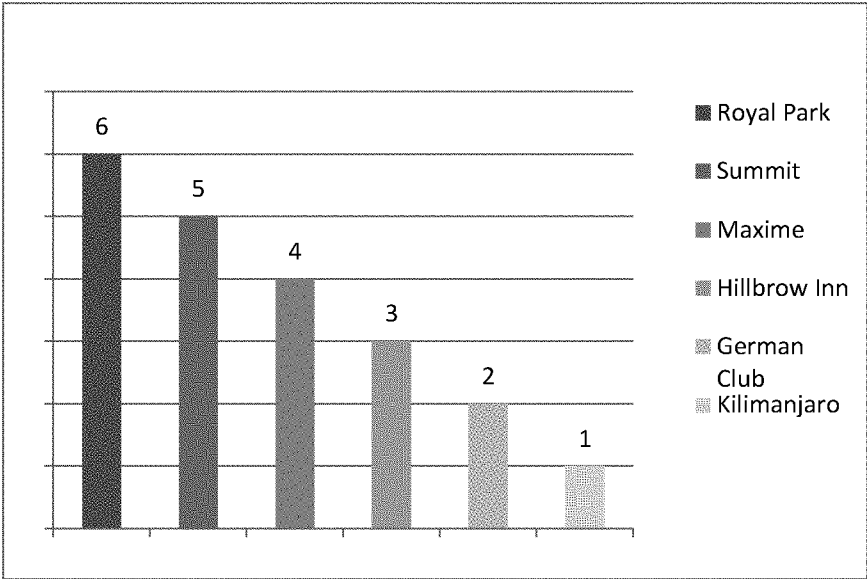
²⁵² Interview with Sex Worker, in Hillbrow, S. Afr. (Oct. 16, 2013) (on file with author).

FIGURE 3: RANKING OF NUMBER OF FOREIGNERS IN CLUBS
AS PERCEIVED BY HILLBROW POLICE INTERVIEWEES



Note: Higher indicates more favorable police rank.

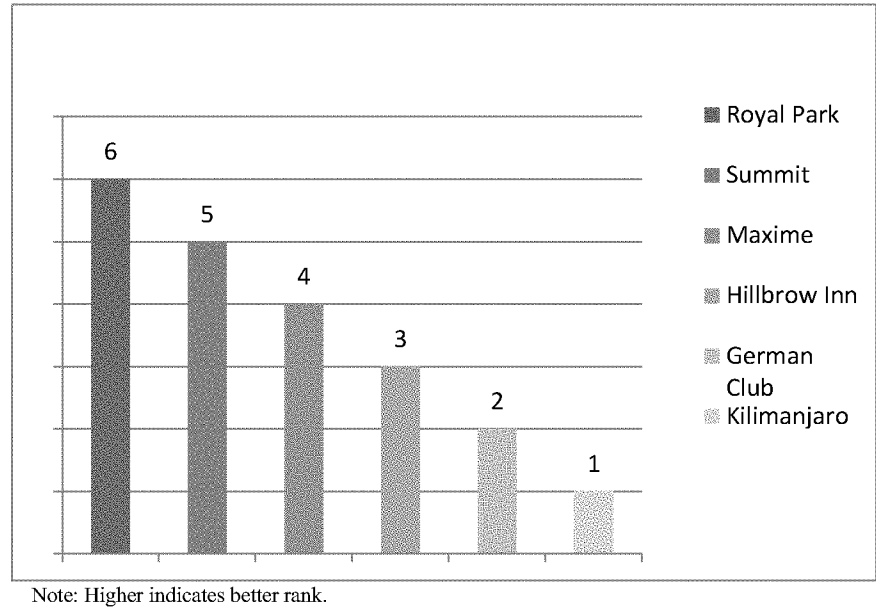
FIGURE 4: RANKING OF PROFESSIONALISM OF CLUBS
AS PERCEIVED BY HILLBROW POLICE INTERVIEWEES



Note: Higher indicates more favorable police rank.

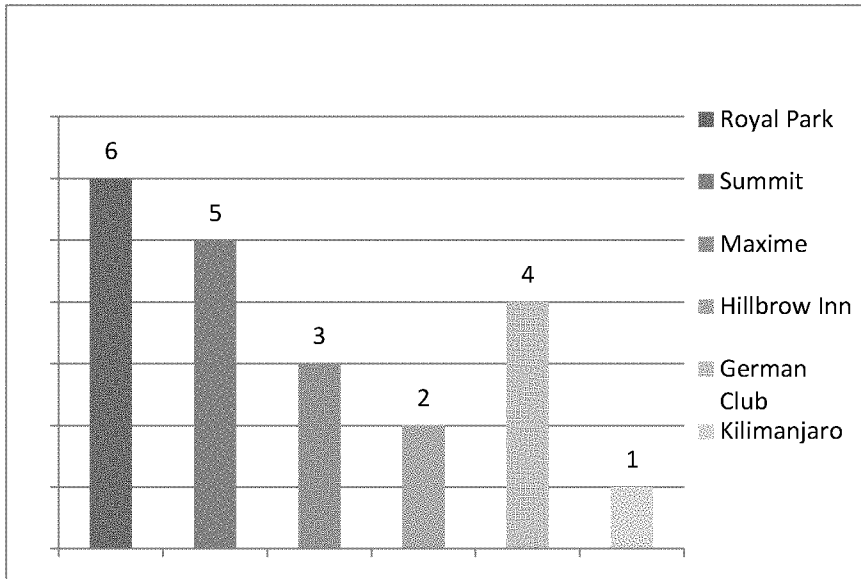
Hillbrow police member interviewees were asked to rate the professionalism of sex workers in the different clubs on a scale of 1 (most professional) to 6 (least professional). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more professionalism. The following graph shows the rankings of clubs in terms of professionalism of their sex workers. Amongst the six clubs, Royal Park was found to have the highest ranking in professionalism of sex workers, followed then, in descending order, by Summit Club, Maxime, Hillbrow Inn, German Club, and Kilimanjaro.

FIGURE 5: RANKING OF PROFESSIONALISM OF CLUBS AS PERCEIVED BY HILLBROW POLICE INTERVIEWEES



Hillbrow police member interviewees were asked to rate the different clubs by frequency of raids on a scale of 1 (most raids) to 6 (least raids). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more raids. The following graph shows the rankings of clubs in terms of frequency of raids. Amongst the six clubs, Royal Park was found to have the highest ranking, followed then, in descending order, by Summit Club, German Club, Maxime, Hillbrow Inn, and Kilimanjaro.

FIGURE 6: RANKING OF FREQUENCY OF RAIDS IN CLUBS
AS PERCEIVED BY HILLBROW POLICE INTERVIEWEES



Note: Higher indicates more frequent raids.

V. DISCUSSION OF QUANTITATIVE TRENDS

To determine the relationships between the variables, I conducted pairwise correlation tests. Prior to conducting the tests of correlation, I inverted the values of the responses so that a higher response represented a more favorable police ranking. I then subjected the data to tests for normality, of which the results showed non-normality of data ($p < .05$). As such, non-parametric tests of correlation (i.e., Spearman's tests of correlation) were performed. Results of the correlation tests are presented in Table 2. All four variables were statistically significantly correlated ($p < .05$).

First, beauty of sex workers was positively correlated with professionalism of sex workers ($p < .001$), which indicates that in brothels where police perceived sex workers to be more beautiful, the perception of the professionalism of sex workers was higher as well. Second, beauty of sex workers was negatively correlated with foreign sex workers ($p = .026$), which indicates that in brothels where police perceived sex workers to be more beautiful, the brothels were perceived to have lower numbers of foreign sex workers. Third, professionalism was negatively correlated with foreigners ($p = .014$), which indicates that brothels with higher perceived professionalism of sex workers were also perceived to have lower numbers of foreign sex workers. The significant number of Russian and Thai sex

workers at Royal Park and Summit Club, who were fairer-skinned, may have been a confounding factor in connection of foreignness to race in that brothel. While foreignness as a negative attribute was usually associated with migrants from other African countries, including Zimbabwe, Mozambique, and Nigeria, there were also foreign nationals from Thailand and Russia in higher-end establishments. The sex workers themselves often tied foreignness to being from other African countries, but the data show that the police also recognized the presence of foreign sex workers beyond Africa.

These analyses were also conducted to look at the relationship between the characteristics of sex workers and police regulation and activity. First, beauty of sex workers was positively correlated with the frequency of raids ($p < .001$), as was professionalism ($p < .001$). Meanwhile, foreignness was negatively correlated with raids ($p = .006$), which indicates frequency of raids in brothels with higher numbers of foreigners. The relationships from the results of the correlation tests are illustrated in the graphs that follow.

TABLE 2: SPEARMAN’S CORRELATION COEFFICIENTS BETWEEN
BEAUTY, PROFESSIONALISM, FOREIGNERS, AND RAIDS

	Beauty	Professionalism	Foreigners	Raids
Beauty	1	.904**	-.253*	.724**
Professionalism		1	-.278*	.721**
Foreigners			1	-.310**
Raids				1

Note: ** $p < .01$. * $p < .05$.

FIGURE 7: RELATIONSHIP BETWEEN PERCEPTIONS OF BEAUTY (X-AXIS) AND PROFESSIONALISM, FOREIGNERS, AND RAIDS (Y-AXIS)

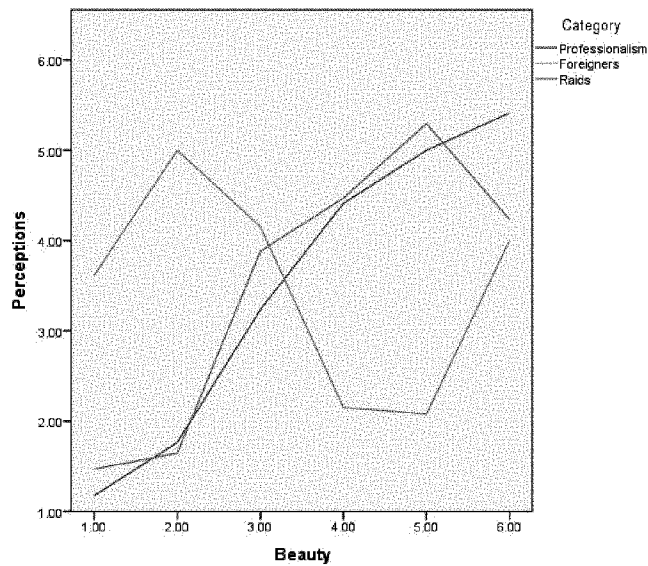


FIGURE 8: RELATIONSHIP BETWEEN PERCEPTIONS OF PROFESSIONALISM (X-AXIS) AND BEAUTY, FOREIGNERS, AND RAIDS (Y-AXIS)

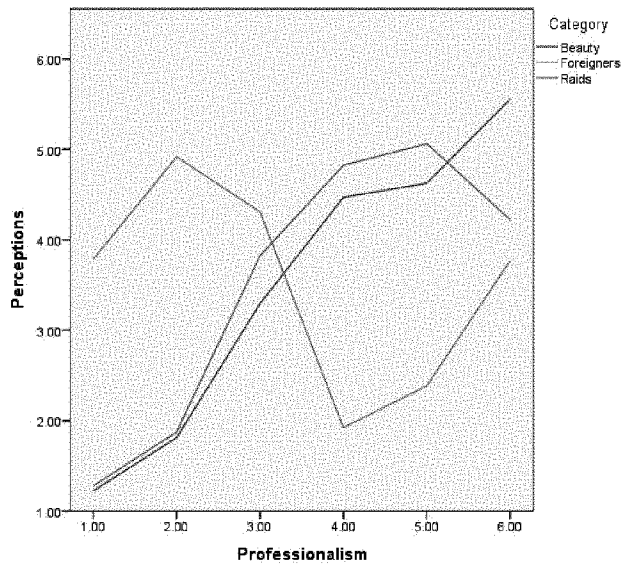


FIGURE 9: RELATIONSHIP BETWEEN PERCEPTIONS OF FOREIGNERS (X-AXIS) AND BEAUTY, PROFESSIONALISM, AND RAIDS (Y-AXIS)

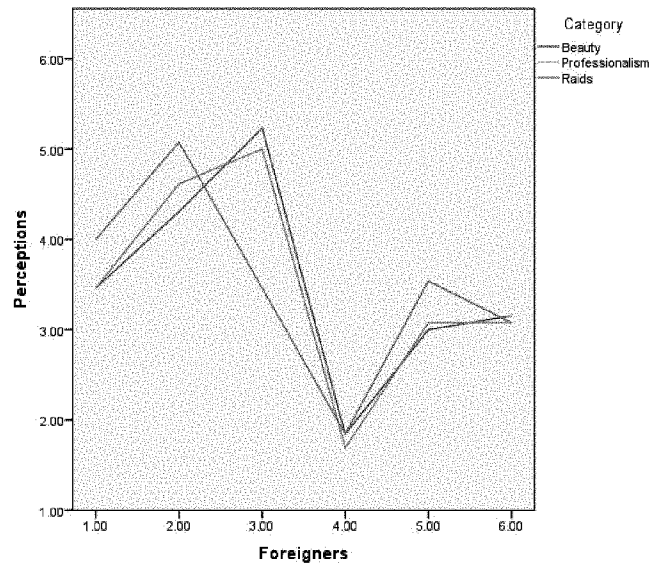
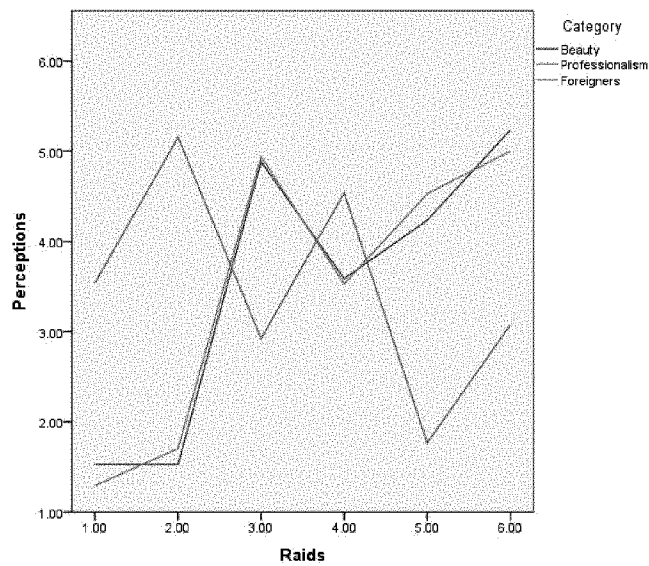


FIGURE 10: RELATIONSHIP BETWEEN PERCEPTIONS OF RAIDS (X-AXIS) AND BEAUTY, PROFESSIONALISM, AND FOREIGNERS (Y-AXIS)



In those brothels where sex workers were perceived to be beautiful, the police were more likely to believe that the sex workers should be regarded as professionals. In those brothels where the sex workers were perceived to

be less beautiful, the sex workers were more likely to be assumed to be foreign. Police were more likely to raid brothels that housed sex workers believed to be beautiful and professional.

These findings are surprising if one assumes that police engage in raids to curtail illegal activities that are more likely to occur in less organized environments that are not highly professional. While prostitution is illegal in South Africa, police treated it as if it were legalized and focused on policing activities they perceived attendant to legalized prostitution, such as drug dealing, theft, or assault. The women in the professional environments reported that they felt safe and comfortable in their working conditions because they had the protection of these highly organized brothels. It is possible that the professionalism of these venues leads to more valued sex workers and more eager policing. Nevertheless, if the police are avoiding dangerous spaces, they are not acting to prevent criminality. My visits to the various brothels confirmed that those brothels that were deemed to be more “professional” were highly organized and adopted a tourism approach to the trade, which was very customer service driven.²⁵³ As such, one would expect police to investigate the less professional brothels if they were primarily interested in investigating crimes associated with illegal prostitution, as they opted not to enforce prostitution-related offenses in these brothels.

One explanation for the inverse relationship between professionalism of the brothel and likelihood of police raids is that police are not motivated by a desire to curtail crime. Rather, brothels that are highly organized and professional are more likely to be raided because police are motivated by other incentives. Police may feel pressure to protect clients at higher-end establishments, although the officers never suggested this motivation. The officers spoke about their choices in terms of their own self-interest in being in proximity to more prized sex workers. Police appear to be patrons at the more upscale establishments and tend to return to familiar territory. The policing of these locations is quasi-policing and quasi-socializing in that the police were there to verify liquor licenses, but they would also consume beverages at the various establishments and socialize with others and the sex workers at the establishments. Sex workers did confirm that they had police officer clients during the raids, and some indicated that there were certain police officers who expected to receive discounted services during these encounters, although most paid full price.²⁵⁴ The police visit these brothels late in the evenings and often partake in drinking alcoholic beverages.²⁵⁵

²⁵³ Field Notes Entry (Oct. 1, 2013) (on file with author) (illustrating the various levels of professionalism).

²⁵⁴ Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014).

²⁵⁵ Interview with Two Brothel Managers, in Hillbrow, S. Afr. (Jan. 10, 2014).

There may also be a greater opportunity to extract bribes at highly organized establishments precisely because of their high profits, high-profile clientele, and willingness to cooperate with the police. The clubs were all of similar sizes and the differences in policing are unlikely to be the result of varying club sizes.

These policing practices provide further support for the notion that sex worker choices concerning an appropriate venue for work are far from accidental.²⁵⁶ These spaces are socially produced by a sex worker's understanding of her bodily capital, competition, potential clients, and general comfort in various social situations. The notions of beauty and distribution of policing resources were mutually reinforcing. Critical geographer Professor Phil Hubbard notes:

The city is a map of the hierarchy of desire, from the valorized to the stigmatized. It is divided into zones dictated by the way its citizens value or denigrate their needs. Separating the city into areas of [specialization] makes it possible to meet some needs more efficiently; it is also an attempt to reduce conflict between opposing sets of desires and the roles people adapt to try and fulfil those desires.²⁵⁷

Through this lens, the perception of the sex worker's body is a mode for reproducing patriarchy and exercising power over female sexuality.²⁵⁸ Sex workers informed me that they would change their work venue based on how they were perceived.²⁵⁹ Sex workers who perceived themselves as being lower on the social strata entered venues that provided less police protection, although these venues were often believed to be more dangerous.²⁶⁰ Beauty became a corollary for heightened, yet benevolent, surveillance over the sex workers' expression of sexuality. Sex workers from Hillbrow Inn and

²⁵⁶ Field Notes Entry (June 23, 2013) (partially redacted and on file with author).

²⁵⁷ Hubbard, *Sex Zones*, *supra* note 133, at 60 (quoting PAT CALIFIA, PUBLIC SEX: THE CULTURE OF RADICAL SEX 205 (1994)).

²⁵⁸ Thusi, *supra* note 31, at 222 (providing a legal history of the policing of sex work) ("The sex worker's body was a site for the exercise of bio-power and sexual normalization during public health discourses because it embodied a threat to heterosexual norms that viewed marriage as the sole site for sexual expression and sex. Sex work also threatened patriarchal economic systems that deprived women from independent economic activities.").

²⁵⁹ Interview with Five Sex Workers, in Hillbrow, S. Afr. (Jan. 26, 2014) (explaining that Summit Club managers monitored the sex workers' size and waist measurements); Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014); Interview with Two Sex Workers, in Hillbrow, S. Afr. (Oct. 10, 2013).

²⁶⁰ Interview with Five Sex Workers, in Hillbrow, S. Afr. (Jan. 26, 2014) (explaining that Summit Club managers monitored the sex workers' size and waist measurements); Interview with Two Sex Workers, in Hillbrow, S. Afr. (Jan. 24, 2014); Interview with Two Sex Workers, in Hillbrow, S. Afr. (Oct. 10, 2013).

German Club were described as “foreign.”²⁶¹ The policing was qualitatively different in the higher-end venues, where police officers demonstrated respect toward the sex workers. In less organized environments, the police officers described the sex workers as dirty and were brash in their interactions with them.²⁶² The heightened surveillance in the case of higher-end spaces resulted in more protection but also more vulnerability to police exploitation. The decreased surveillance in lower-end spaces resulted in fewer police encounters, but those limited encounters were hostile and aggressive.²⁶³ Sex workers from Summit Club and Royal Park were valorized but simultaneously subject to frequent police encounters and potential exploitation at the hands of the police.²⁶⁴ In this way, assertions about the sex workers’ beauty alienate certain sex workers and valorize others.

Scholars have explored the ways that male-dominated settings may foster a form of competition for hegemonic masculinity;²⁶⁵ expressing hotel–brothel preferences also was a method for police officers to brag amongst each other and demonstrate their superlative desires and tastes. During the focus group discussion with Hillbrow police, officers’ demeanor and tone of voice suggested they were proud of their preferred hotel–brothels and appeared to adversely judge police members who had more alternative desires.²⁶⁶ It was a way for officers to brag in the “locker room” and discuss their “conquests,” so to speak.²⁶⁷ Building upon the work of Professor Phil Hubbard, statements of desire like these are a vehicle for the expression of

²⁶¹ See Sean M. Heneghan, *Employment Discrimination Faced by the Immigrant Worker: A Lesson from the United States and South Africa*, 35 FORDHAM INT’L L.J. 1780, 1820 (2012) (“In South Africa, there is the social problem of xenophobia rampant in the country, which is demonstrated by the attacks on immigrants for the perception they take away jobs from citizens, and the study by Kurt and Amanda April showing discrimination against immigrants in the workplace.”).

²⁶² Field Notes Entry (Jan. 26, 2014) (documenting multiple street-based sex workers describing negative interactions with the police).

²⁶³ Field Notes Entry (Jan. 26, 2014). Sex workers from less organized environments or who worked from the streets near Hillbrow described violent encounters with the police during which they were pepper sprayed and beaten with police batons. *Id.* One sex worker remarked, “They say we make the street dirty.” *Id.*

²⁶⁴ See Alyson Kay Spurgas, *Body Image and Cultural Background*, 75 SOC. INQUIRY 297, 301 (2005) (“Black women are often forced to judge themselves not only in accordance with Black cultural standards, but also to compare themselves to White standards of beauty for women.” (citation omitted)).

²⁶⁵ See, e.g., Deborah L. Brake, *Lessons from the Gender Equality Movement: Using Title IX to Foster Inclusive Masculinities in Men’s Sport*, 34 LAW & INEQ. 285, 296 (2016) (“The all-male enclave of men’s sports creates an environment rife for hegemonic masculinity to take hold: All-male settings tend to be more homophobic and to promote masculine performances that denigrate homosexuality and flaunt sexual conquests of women.”).

²⁶⁶ Transcript of Focus Group with Police (May 21, 2014) (on file with author).

²⁶⁷ See Brake, *supra* note 265, at 296.

masculinities that hierarchize female sexualities, reflecting a geography of sexual desire in the urban space.²⁶⁸ In this way, the officers were engaging in a homosocial performance that allowed them to regulate each other and assess whether they had the “right” desires.²⁶⁹ The relationship between masculinity and femininity was mutually reinforcing and extended beyond masculinity into the ways that patriarchy can display patriotism and national identity.

Moreover, beauty and hygiene are closely intertwined.²⁷⁰ The sex worker body has consistently been policed as a matter of public hygiene and public health. Here, beauty is treated as synonymous with proper hygiene.²⁷¹ Sex workers in indoor locations have generally been considered more professional and, correspondingly, more hygienic;²⁷² meanwhile, sex workers in the streets were often perceived as “dirty” or less hygienic.²⁷³ In this way, the correlation of surveillance and beauty described in this Article conflicts with accounts of policing that seem to focus more attention to the hygiene of various sex workers,²⁷⁴ whereby the sex workers who are

²⁶⁸ See generally Hubbard, *Sexing the Self*, *supra* note 210 (describing the ways that perceptions of sexual value and identity shape the urban landscape and create a geography of sexuality).

²⁶⁹ See Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies*, Terry Stops, and Police Training, 18 COLUM. J. GENDER & L. 671, 674 (2009) (“A masculinity contest is a face-off between men where one party is able to bolster his masculine esteem by dominating the other. A prototypical masculinity contest is a bar fight.”). These performances may be described as expressions of “‘hegemonic’ masculinity,” which is “the privileged style of masculinity in a given historical moment: the most desirable or most proper way of being a man.” Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL’Y 13, 20 (2011).

²⁷⁰ Historically, sex work has been perceived to represent a threat to sex workers’ quality of life and basic hygiene. See Thusi, *supra* note 31, at 208 (detailing the public health discourse that justified the forced physical examination and registry of suspected sex workers). This gave rise to an urgent need to regulate them more thoroughly to prevent the spread of contagion, while male clients of sex workers were not similarly viewed as carriers of disease. See, e.g., Jeremy C. Martens, ‘Almost a Public Calamity’: Prostitutes, ‘Nurseboys’, and Attempts to Control Venereal Diseases in Colonial Natal, 1886–1890, 45 S. AFR. HIST. J. 27, 32–33 (2001) (describing double standards in the British Empire legislating sex workers for venereal diseases but not male clients). Proper society treated men as accidental victims in the public health discourses, coerced by the temptations presented by sex workers. *Id.*

²⁷¹ Martens, *supra* note 270, at 32–33.

²⁷² Teela Sanders, *A Continuum of Risk? The Management of Health, Physical and Emotional Risks by Female Sex Workers*, 26 SOC. HEALTH & ILLNESS 557, 563 (2004).

²⁷³ *Id.*

²⁷⁴ Thusi, *supra* note 31, at 208; see also Priscilla Alexander, *Prostitution: Still a Difficult Issue for Feminists*, in SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY 184, 211 (Frédérique Delacoste & Priscilla Alexander eds., Cleis Press 2d ed. 1998) (“[A]lthough some epidemiologists like to claim that prostitutes are a ‘reservoir of contagion’ or a ‘core group of high frequency transmitters,’ in the United States, less than 5% of STDs are associated with prostitution” (citations omitted)).

considered the most “dirty” would receive the most policing.²⁷⁵ Instead, this ethnography suggests that more hygiene (or, in the language of the assessments used here, more “professionalism”) at times seemed to subject sex workers to more policing. The more hygienic, or beautiful, sex workers in Hillbrow were more heavily policed.²⁷⁶ However, the type of policing that the more hygienic sex workers experience is not the crude policing focused on merely driving them out and making them invisible, as occurred in other parts of Johannesburg.²⁷⁷ Instead, it is a more benevolent form of policing, reflecting appreciation for the sex workers and an intent to protect them, that is a more direct expression of biopower in its gaze on these sex workers’ bodies.²⁷⁸ It is a more intense gaze, but also more reverent. There is a level of respect associated with it that is not present in the form of policing that relies on brute force and violence to enforce the law. In this way, even where law is unable to directly achieve its aims by resulting in more prosecution, it is able to do so indirectly by providing moral currency through delegitimizing the activities of a particular group.²⁷⁹

As I have previously explained, “[t]he sex worker’s body [is] a site for the exercise of . . . sexual normalization during public health discourses because it embodie[s] a threat to heterosexual [and gendered] norms that [view] marriage as the sole site for sexual expression”²⁸⁰ The regulation

²⁷⁵ See Alexander, *supra* note 274, at 211 (explaining that despite some epidemiologists’ references to sex workers as “reservoir[s] of contagion,” the rate of STDs among sex workers in the United States is only 5%).

²⁷⁶ See *supra* Part IV.

²⁷⁷ See *supra* Part I.

²⁷⁸ See Mindy Jane Roseman & Alice M. Miller, *Normalizing Sex and Its Discontents: Establishing Sexual Rights in International Law*, 34 HARV. J.L. & GENDER 313, 329 (2011) (“In tandem with the modern state’s police powers, which include promoting and protecting the public’s health, the nineteenth and twentieth centuries witnessed the rise of ‘biopower’ over individuals’, especially women’s, reproductive and sexual lives. The human rights regime in health is a descendant of this mixed legacy of health control and promotion.” (citation omitted)).

²⁷⁹ Cf. Joel Feinberg, *The Expressive Function of Punishment*, 49 MONIST 397 (1965) (discussing the expressive function of the law in communicating shared community values and morality).

²⁸⁰ Thusi, *supra* note 31, at 222; see Amalia Lucia Cabezas, *Legal Challenges to and by Sex Workers/Prostitutes*, 48 CLEV. ST. L. REV. 79, 88–89 (2000) (“As routine victims of police violence and arrests, sex workers fear reporting the violations of their rights. Yet, women sex workers, derogating from the normative-heterosexual paradigm, are often victims of extortion, assault, rape, abuses by police officers, loss of child custody, robbery, humiliation, harassment, discrimination in employment, housing and law enforcement, and even murder. Protecting the rights of sex workers, and protecting all women from violence, is never as high a priority as arresting women for selling sex. Furthermore, as legal theorists Danielsen and Engle suggest, ‘The more women deviate from this framework of acceptable gendered behavior [the monogamous heterosexual reproductive relationship], the more they risk being disciplined, either directly by the rules criminalizing prostitution, or indirectly, through the law’s failure to protect them from abuse.’” (citations omitted)).

of sex work is linked to the regulation of all female sexuality.²⁸¹ Sex work also threatens patriarchal economic systems that deprive women of independent economic activities.²⁸² The policing of sex workers' beauty reinforces hierarchies about which bodies society values, and which bodies are disposable. The fact that sex workers in more dangerous spaces received decreased police presence reinforces the perception that they are less valuable in the eyes of those who enforce the law. For example, regulating sex work through public health discourses to end the spread of disease has created moral panics that legitimized the targeting of the sex worker's body as the site of social evil.²⁸³ How police approach their interactions with sex workers is therefore a reflection of these popular understandings about female sexuality, hygiene, public health, and morality, and how the State intends to normalize certain standards.²⁸⁴

VI. IMPLICATIONS OF ASSIGNING VALUE TO BODIES

These research findings demonstrate that assessing and valuing different classes of bodies can supersede the policing goals of combatting crime and serving the community.²⁸⁵ Police reforms that focus on enhancing community engagement and perceptions of legitimacy may result in more procedurally fair police–citizen interactions.²⁸⁶ However, solely focusing on improving these interactions ignores the important role police play in reinforcing existing racial and sexual hierarchies—a role that at times supersedes the crime prevention role. Foucault's observation that police discipline the bodies of citizens through constant surveillance is poignant as presented in the policing of sex workers in Hillbrow.²⁸⁷ But policing went

²⁸¹ Heidi Tinsman, *Behind the Sexual Division of Labor: Connecting Sex to Capitalist Production*, 17 YALE J. INT'L L. 241, 241 (1992) ("Why do surrogacy and bride-selling pose problems different from those raised by garment-making and grape-picking? Why does the prostitute epitomize the *most* exploited woman? 'Female sexuality,' of course, is what is different about sex-work.").

²⁸² Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 351 (2006) (describing the "pro-work" view of sex work as viewing "prostitution as a potentially liberating act, in which the woman casts off the shackles of patriarchy that would see prostitution as degrading, and finally takes control of her own body").

²⁸³ See Martens, *supra* note 270, at 32–33; Pamela Scully, *Rape, Race, and Colonial Culture: The Sexual Politics of Identity in the Nineteenth-Century Cape Colony, South Africa*, 100 AM. HIST. REV. 335, 337–38 (1995).

²⁸⁴ See Martens, *supra* note 270, at 32–33.

²⁸⁵ P.A.J. WADDINGTON, *POLICING CITIZENS: AUTHORITY AND RIGHTS* 31–32, 35 (1999) (noting the role of police in "keeping people in their place").

²⁸⁶ See, e.g., Tyler, *supra* note 5, at 1972.

²⁸⁷ See FOUCAULT, *DISCIPLINE AND PUNISH*, *supra* note 8, at 302–05.

even further than mere surveillance. Using the subjective language of beauty and aesthetics, police assigned value to different individuals and allowed for qualitatively different types of police interactions based on where sex workers stood on the social hierarchy. The incongruence of simultaneous overpolicing and underpolicing is predictable if we acknowledge that police are often focused on reinforcing bodily hierarchies and values rather than mere crime prevention and community service.²⁸⁸ Police do not need external legitimation from the policed community to fulfill this role. Their role as normalizing agents of dominant social norms provides enough authority to execute this function. Even where the policed community does not believe the police are legitimate, police may enforce the law consistent with dominant norms about who is valuable.²⁸⁹ Police have the discretion to make determinations about which communities should be subject to qualitatively more aggressive policing.²⁹⁰

The higher level of disciplinary surveillance of more beautiful sex workers illustrates how normalization can take form in unexpected ways.²⁹¹ This Article's finding that there seems to be a heightened policing of "beautiful" sex workers in the Hillbrow community reinforces the notion that whiter bodies are more vulnerable and worthy of police protection. My research suggests that whiter feminine bodies were also seemingly subject to more police encounters. They were therefore more vulnerable to police exploitation. In this community during this period, white bodies were more protected by the police but more vulnerable to police deviance. Several sex workers in these brothels reported that they had friendly interactions with the police, but the frequent interactions exposed them to sexual advances by the police. Conversely, blacker bodies were underprotected, confirming that the State did not value these bodies as highly as the whiter bodies. Several sex workers in these brothels reported that they would not feel comfortable seeking assistance from the police, and the police in turn indicated that they viewed sex workers in these brothels as dirty and less professional. In those instances when sex workers with blacker bodies did interact with the police,

²⁸⁸ WADDINGTON, *supra* note 285, at 31–32, 35.

²⁸⁹ See Eric J. Miller, *Role-Based Policing: Restraining Police Conduct Outside the Legitimate Investigative Sphere*, 94 CALIF. L. REV. 617, 622 (2006).

²⁹⁰ WADDINGTON, *supra* note 285, at 31–32.

²⁹¹ Arnetta Rogers, *How Police Brutality Harms Mothers: Linking Police Violence to the Reproductive Justice Movement*, 12 HASTINGS RACE & POVERTY L.J. 205, 226 (2015) ("In the economy of biopower, the function of racism is to regulate the distribution of death and to make possible the murderous functions of the state. These more deep-seated philosophical frameworks of examining the role of race, reproduction, and state-sanctioned violence fits squarely into a larger fear recognized on both sides of a 'War on Black Bodies.'" (citations omitted)).

police officers were more aggressive with them. They were both less policed and more harshly policed.

Intersectionality helps to explain this unexpected turn in the policing of these sex workers because race and gender collided to produce these results. The police were providing additional protection to whiter sex workers and allowing for the benign neglect of the blacker sex workers. This action was an exercise of discipline that reinforced which bodies matter to society.²⁹² At the same time, police subjected the whiter sex workers to increased surveillance and discipline that ensured their compliance with popular expectations about femininity and womanliness.²⁹³ These initial findings are profound as they highlight the complexities of the under- and overprotection of black bodies in South Africa, and raise the question of whether and how these patterns of policing repeat themselves in other highly racialized societies like the United States of America. It suggests that white bodies are perceived as valuable and worthy of protection, while black bodies are not, even where black police officers preserve the relevant social norms. While this approach to policing makes white femininity more vulnerable to sexual exploitation at the hands of the police, it leaves black femininity alone to fend for itself.

These research findings also demonstrate the importance of centering gender alongside race within criminal justice discourses. Through a centering of the experiences of women of color, the hidden rationales affecting policing can be challenged and complicated. Common wisdom about the police and what motivates policing can be questioned.

The research findings from this study undermine the standard explanations of policing and suggest that police exercise disciplinary power by signaling which lives are worthy of protection and which lives can be devalued. As enforcers of the racial hierarchy, the police protect and preserve society's biases. Because police are both informed by and perpetuate society's biases, it is not clear that efforts at reform can effectively sever the inherent cycle of this feedback loop. Future research should examine how efforts at reform should instead begin with a reimagination of community safety, including a determination of who should be the guardians of the community. Perhaps, the State should be less involved in community safety and allow communities to police themselves.

²⁹² See *supra* Part IV. See generally FOUCAULT, DISCIPLINE AND PUNISH, *supra* note 8.

²⁹³ See *supra* Part IV.

South Africa and the United States have different histories in that police in the United States originated in part from slave patrols,²⁹⁴ and policing in South Africa originated from colonialism²⁹⁵ and apartheid,²⁹⁶ but policing in both countries was intended to protect white supremacy.²⁹⁷ While there is not a robust discourse on police abolitionism in South Africa,²⁹⁸ policing scholars in the United States have been discussing the limitations of police reform and the need for a more radical reconception of police. Professor Paul Butler cautions that reformist measures may pacify people into complacency with a system that instead requires transformation and reimagining, rather than tinkering.²⁹⁹ Professor Eric Miller argues that the community should play the primary role in preventative policing.³⁰⁰ Professor Alex Vitale suggests that we should invest in the power of communities to make us safe because “the basic nature of the law and the police, since its earliest origins, is to be a tool for managing inequality and maintaining the status quo.”³⁰¹ Professor Amna Akbar argues that seriously addressing the legacy of racial

²⁹⁴ See Carol S. Steiker, *Second Thoughts About First Principles*, 107 HARV. L. REV. 820, 833 (1994) (“[T]he effort in many Southern cities and towns to control first the slave population and then the freed black population after the Civil War all contributed to the development of modern police forces—one of the ‘major social inventions’ of the nineteenth century.” (citations omitted)).

²⁹⁵ See generally Rauch, *supra* note 36, at 119.

²⁹⁶ See generally BREWER, BLACK AND BLUE, *supra* note 40 (outlining the colonial and apartheid origins of policing in South Africa).

²⁹⁷ See Norimitsu Onishi, *Police in South Africa Struggle to Gain Trust After Apartheid*, N.Y. TIMES (Aug. 13, 2016), <https://www.nytimes.com/2016/08/14/world/africa/south-africa-apartheid-police-killings.html> [<https://perma.cc/V9QT-3GBW>] (discussing the challenges in reforming the police organizations in South Africa and the United States to respect the rights of Blacks in both countries). It is important to emphasize that “white supremacy” should not be reduced to individual acts by atomistic, racist, bad actors. It is a system, a logic, and an ideology that prioritizes whiteness as the norm. See ROBIN DIANGELO, WHITE FRAGILITY 28–29 (2018) (noting that “[w]hite supremacy does not refer to individual white people and their individual intentions or actions but to an overarching [collective] system of domination It promotes the idea of whiteness as the ideal . . . well beyond the West,” and that white supremacy is often unnamed and that much of its power “is drawn from its invisibility”); Charles W. Mills, *White Supremacy*, in THE ROUTLEDGE COMPANION TO PHILOSOPHY OF RACE 574, 583 (Paul C. Taylor et al. eds., 2018) (stating that white supremacy is “a kind of ontological and epistemic state imbued with its own worldview-shaping power, a carrier of epistemic violence, a ‘racial frame’ for understanding social reality”).

²⁹⁸ But see Paul T. Clarke, *It’s Time to Talk Prison Abolition in South Africa*, AFR. IS A COUNTRY (Sept. 11, 2019), <https://africasacountry.com/2019/09/its-time-to-talk-prison-abolition-in-south-africa> [<https://perma.cc/EQW4-AGND>].

²⁹⁹ Paul Butler, *The System Is Working the Way it Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1467 (2016) (arguing that the criminal justice system is functioning exactly as it was designed); see also Nirej Sekhon, *Blue on Black: An Empirical Assessment of Police Shootings*, 54 AM. CRIM. L. REV. 189, 192 (2017) (outlining several of the limitations of popular police reform initiatives).

³⁰⁰ See generally Miller, *supra* note 289, at 617.

³⁰¹ VITALE, *supra* note 5, at 15.

bias in policing and criminal justice requires building a new vision of the world.³⁰² Professor Allegra McLeod posits that reinvesting funds from the criminal justice system into early childhood education, social services, and economic development, as well as the decriminalization of less serious offenses, would allow us to eliminate the need for a massive criminal justice apparatus.³⁰³

To the extent intermediary reform efforts are needed to address immediate issues in policing, advocates for policing and criminal justice reform in Johannesburg should center the experience of women and women of color in their reform efforts, because how they are policed supports both patriarchy and racial subordination. Reforms should address the specific ways that women are over-surveilled and underprotected. But effective change cannot come only from police reform, but from cultural change. The South African Police Service was reformed after the end of apartheid to incorporate human rights and move away from oppressive policing, but those internal reforms were insufficient at changing the cultural aspects of policing in South Africa.³⁰⁴ Cultural and narrative strategies should be key to any advocacy strategies because popular culture is part of what drives the discourses that label people and announce bodily values. More democratic policing requires less formal policing. Finally, as it relates specifically to the treatment of sex workers, the stigma that is attached to the “criminal” label is insurmountable for sex workers in South Africa. People concerned with their well-being should be working toward a world where sex work is decriminalized.

CONCLUSION

Patriarchy and racism can take on surprising forms. In Hillbrow, the sex workers who police perceived as most beautiful and who worked in the safest spaces had more police interactions and were more heavily policed. The type of policing that these sex workers experienced reflected a benevolent police gaze—a type of disciplinary surveillance—that relies on less brute force. The police in Hillbrow reinforced the higher value of whiter bodies over blacker bodies at the expense of reducing crime, which provides support, however limited, to the notion that police serve and protect racial hierarchies in

³⁰² See Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 435 (2018) (“Centering the experiences of Black people—chattel slavery, mass incarceration, devastating economic inequality, and regular police brutality and lethality—in reading the history of American law, a bleak portrait of the American project emerges. The law and the state are deeply implicated in, and significantly responsible for, historic and present violence and inequality.” (footnotes omitted)).

³⁰³ Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1225–26 (2015).

³⁰⁴ See BRUCE, *supra* note 63.

countries that have a history of white supremacy before they serve and protect the people. If the trends detected in this research are borne out in other and more communities, then it suggests that racial bias is at the very heart of policing and is not an aberration that can be corrected through more training or more policing. Police discipline and reinforce which bodies are valued and which bodies survive. They allow blacker bodies to suffer from neglect. Attempts to reform police are unsuccessful because reinforcing racial and sexual hierarchies is what police often do.³⁰⁵ Transformation in policing requires more than tinkering with the current system, which police will protect and preserve, despite good intentions. Increasing democracy and fairness in policing requires careful consideration of the ways race, gender, and sexuality complicate our understanding of the police.

³⁰⁵ See, e.g., Butler, *supra* note 299, at 1442 (noting that criminal law reinforces white supremacy and racial hierarchy).